

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 13 August 2007

**Public Authority:** Cabinet Office  
**Address:** Propriety and Ethics Team  
Room 118  
70 Whitehall  
London  
SW1A 2AS

### Summary

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The complainant asked the public authority for information about a meeting at Downing Street in February 2002 to discuss the NHS IT modernization project. The public authority provided some background briefing information but withheld the rest, citing the exemptions in sections 21 and 35(1)(a) and (d) of the Freedom of Information Act 2000 ('the Act'). After the Commissioner's intervention the public authority released some further information. The Commissioner has decided that the public authority was justified in withholding the information to which it applied section 21. However, he has decided that the balance of the public interest favours disclosure of the information covered by section 35(1). Accordingly, the Commissioner requires the public authority to disclose that information within 35 calendar days of this notice. The Commissioner also concluded that the public authority had breached section 1(1)(a) of the Act in failing to give the complainant adequate written notification about whether it held information of the description specified in the request, and section 17(3) because it failed to explain its application of the public interest test adequately.

### 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 5 January 2005 the complainant requested by email:

*'details including emails, letters, reports, memos, electronic or other material on a meeting at Downing Street in February 2002 to discuss a modernisation of the NHS based on IT. It was attended by Sir John Pattison, Lord Hunt, Mr Blair and several others'.*

3. The Cabinet Office replied on 3 February 2005 confirming that it held the information relevant to the request. However, it stated that the exemption under section 35(1)(a) of the Act applied, and that it would need further time of approximately twenty days in order to consider the public interest test.
4. On 7 March 2005 the Cabinet Office informed the complainant that some of the requested information *'relating to some background briefing for the meeting'* could be released, which it attached. It stated that the rest of the information was exempt from disclosure for the following reasons.
  - A proportion of the information, which the Cabinet Office detailed, was exempt under section 21 of the Act because it was already in the public domain – it identified this information and where it could be accessed.
  - The remaining information was exempt under section 35(1)(a) of the Act because it related to the formulation of government policy.

The information which it considered to be exempt under section 21 of the Act was:

*'background for the meeting includes an article by Paul Starr entitled "Health Care Reform and the New Economy", published in Health Affairs November / December 2000. The documents for the meeting also include references to Derek Wanless's interim report (available on the Treasury website, [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)); a National Audit Office report on medicines management in NHS hospitals (actually an Audit Commission report called "A Spoonful of Sugar: Medicines Management in Hospital", available on the Audit Commission website [www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)), and the NHS Modernisation Board's annual report from 2001 (available on the Department of Health website, [www.dh.gov.uk](http://www.dh.gov.uk))'.*

In relation to section 35(1)(a), the Cabinet Office asserted that:

*'The Act is intended to ensure that Ministers and their officials can share their ideas and proposals candidly, and receive candid advice, while policy is being formulated. It is not in the public interest for policy to be formulated in an atmosphere that prevents departments from exploring all the possible options and considering the implications of work undertaken so far. I am satisfied that in this case the public interest in maintaining the confidentiality of these discussions of policy outweighs any public interest in disclosing the information'.*

5. The complainant asked the Cabinet Office on 11 March 2005 to review their decision, claiming that the public interest would be served by a more comprehensive disclosure of information. He asked it to provide a likely date by which the review would be completed. The Cabinet Office replied on 17 March that it intended to send a substantive reply by 15 April. The complainant responded on 1 April that this

amounted to an unacceptable delay, and stated that if no review decision were forthcoming by 8 April he would make a complaint to the Commissioner.

6. The Cabinet Office informed the complainant on 15 April 2005 that it would not be able to provide a substantive response until 29 April. In the event it actually replied on 5 May. Its internal review decision stated that:

*'I have carefully reviewed the handling of your request. The decision not to disclose the information was made after very detailed consideration. This included consideration of the public interest arguments in favour of disclosure.'*

*Having reviewed the papers I am satisfied that it is in the public interest to withhold the information for the reasons set out in [the] letter of 7 March notwithstanding the arguments you have put forward in favour of a greater release of information. I have therefore concluded that that [sic] there are no grounds for altering the decision taken. I have taken note of the other points you raise in your letter.'*

It provided details of the Information Commissioner's Office.

## The Investigation

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### Scope of the case

7. On 5 July 2005 the complainant contacted the Commissioner to object to the way in which his request for information had been handled. The complainant addressed the public interest test in considerable detail and claimed that it favoured disclosure of the information which he had requested. Some of the points which he made were as follows.

- *'Publication of the deliberations of the seminar... would help to promote good practice, particularly in an area where non-adherence to principles of project management is a frequent weakness highlighted in reports of the National Audit Office...'*, and *'may help to promote health and safety. It would provide a strong incentive to NHS organisations to do their best to show that they are installing safe systems, and that their implementation does not disrupt the care and treatment of patients'*.
- *'The seminar... was the most critical element in the programme. It set in train events which led to the funding of billion of pounds for scheme. Even so, no information provided to Parliament on whether the risks of the NPfIT were fully understood or discussed at the seminar. There is indeed no mechanism for patients, other stakeholders including taxpayers, Parliament and the media, to know the basis of discussion which leads to the public funding of large and ambitious IT programmes.'*
- *'[T]he advice and the outcome would inform debate on the largest public IT programme funded by the British Government'* and *'would help millions of*

*patients to understand decisions and discussions that could directly or indirectly affect them'.*

- *'Publication would reveal information which would promote accountability and transparency', 'could help to tackle fraud and/or corruption', and 'may help to promote probity, competition and value for money'.*

## Chronology

8. The Commissioner wrote to the Cabinet Office and to the complainant on 25 October 2006. He asked the Cabinet Office to clarify its application of the exemptions under section 35(1)(a), and to provide the information to which that exemption had been applied.
9. The Cabinet Office sent its comments and the requested information on 4 December 2006. It decided to communicate annexes A and B of the analytical paper. (The information which was still being withheld therefore comprised the remaining parts of the analytical paper plus two articles from the *'Health Affairs'* journal and a letter dated 26 February 2002.) In relation to the application of section 35(1)(a), it clarified its view that the information withheld under this section related directly to the formulation of policy. Furthermore, it went on to expand upon the public interest test applicable to section 35.
10. It went on to confirm that it considered the issues still to be 'live' at the time of the request and that the early stages of implementation of the NHS IT programme were still highly sensitive. The Cabinet Office confirmed that it had considered redaction of the requested information and as a result had disclosed some of it which *'was factual and descriptive of the contemporary and historic situation regarding NHS IT'*.

## Analysis

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11. The complainant requested details of a specific meeting held in February 2002 to discuss the IT modernisation of the NHS. The Cabinet Office claimed that part of the information was exempt under section 21 of the Act because it was already in the public domain, and the remaining information was exempt under section 35(1)(a) and (d) because it related to the formulation of government policy.

## Section 17

### *Failure to explain the public interest test*

12. In its comments to the Commissioner dated 4 December 2006 the Cabinet Office claimed that:

*'The public interest test was carefully considered following the initial request as well as in the course of [its] review of the decision to withhold some information from [the complainant].'*

Having regard to the contents of the Cabinet Office's refusal notice of 7 March and internal review decision dated 5 May 2005, however, the Commissioner notes that there is no evidence that the Cabinet Office gave any consideration to the public interest factors in favour of disclosing the requested information. The Commissioner considers that the Cabinet Office's refusal notice failed to make an adequate statement of its assessment of the public interest test, and that it therefore acted in breach of section 17(3) of the Act.

### **Exemption - section 21**

13. In its letter of 7 March 2005 the Cabinet Office detailed the information which it considered to be exempt under section 21 of the Act. Section 21(1) of the Act provides that:

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

The Commissioner notes that the complainant did not raise any objection to the application of the exemption under section 21, and considers in any event that it was properly applied to the information which was identified by the Cabinet Office. The *Health Affairs* journal is available by way of subscription, and the individual articles in this case are archived and can be downloaded from the journal's website for free. The Commissioner therefore considers that information contained within the journal is reasonably accessible to those seeking it, and that it was appropriate for the Cabinet Office to have withheld the article by Paul Starr entitled 'Health Care Reform and the New Economy' on the basis that it was exempt under section 21 of the Act. The Commissioner also notes that when the Cabinet Office provided the requested information to him on 4 December 2006 it included within the bundle of documents an article from the November / December 2000 edition of the *Health Affairs* journal entitled 'Patients, Physicians, And The Internet' by Jerome P. Kassirer. This article was not listed amongst the items which the Cabinet Office identified on 7 March 2005 as being exempt under section 21. The failure by the Cabinet Office to confirm or deny that it held this article as part of the requested information amounted to a breach of section 17(1) of the Act, which states that:

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-*

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies.'*

In the Commissioner's view the Cabinet Office should have made the complainant aware of the details of this article in its letter of 7 March 2005. However, since this

article was contained within an academic journal – the same edition as the Paul Starr article cited in the 7 March letter – the Commissioner has decided that it too is available to the applicant via other means under section 21.

### **Exemption - section 35**

14. Section 35(1) of the Act states:

*'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-*

*(a) the formulation or development of government policy,...*

*(d) the operation of any Ministerial private office.'*

In its comments to the Commissioner on 4 December 2006, the Cabinet Office identified information that it explained:

*'relates directly to the formulation of policy...some of the withheld information was used by the Prime Minister to reach decisions on the future role of IT in delivering NHS services... There is therefore a clear relationship between the withheld information and the formulation of policy.'*

It also identified some information that was *'drafted by the Prime Minister's private office staff as part of standard private office procedures'*, which it asserted *'should also be considered to be exempt under section 35(1)(d), which holds that information is exempt if it relates to the operation of any Ministerial private office.'*

15. Having considered the information to which the Cabinet Office applied section 35(1)(a), the Commissioner accepts the Cabinet Office's contention that it related to the formulation of policy, and that the exemption was therefore engaged. However, regarding section 35(1)(d), that paragraph states:

*'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to -...*

*...(d) the operation of any Ministerial private office'*

The Commissioner takes the view that 'operation' should be interpreted quite narrowly, limiting the scope of the exemption to practical matters such as routine emails, procedures for handling ministerial papers, diary and travel arrangements and staffing. He does not consider that the fact that information has originated in a Ministerial private office necessarily entails that it engages section 35(1)(d). In this case the requested information comprised briefing notes for and minutes of a meeting. The Commissioner has concluded that this information relates to the formulation of policy and not the operation of a Ministerial private office, and therefore does not fall within section 35(1)(d).

## The public interest test

16. In relation to section 35(1)(a), the only public interest factor which the Cabinet Office identified to the complainant was in its refusal notice of 7 March 2005:

*'The Act is intended to ensure that Ministers and their officials can share their ideas and proposals candidly, and receive candid advice, while policy is being formulated. It is not in the public interest for policy to be formulated in an atmosphere that prevents departments from exploring all the possible options and considering the implications of work undertaken so far. I am satisfied that in this case the public interest in maintaining the confidentiality of these discussions of policy outweighs any public interest in disclosing the information'.*

In other words, it claimed that the exemption should be maintained in order to facilitate the free and frank exchange of views between policy-makers and advisers.

17. In its comments to the Commissioner on 4 December 2006 the Cabinet Office identified the public interest factors which favoured withholding the information:

officials being able to provide advice without fear that it would be disclosed (the frank advice factor);

participants being able to express their views freely and frankly without feeling inhibited by the possibility of disclosure (free and frank exchange of views);

being able to *'conduct rigorous and candid risk assessments of their policies and programmes'* (candid risk assessment);

providing *'a free space...to "think the unthinkable" and use imagination, without the fear that policy proposals will be held up to ridicule'* ('thinking the unthinkable');

reducing *'the risk that records of such meetings might be neutered...in face of the risk that their disclosure could cause embarrassment'* (accurate record-keeping);

reducing the possibility that participants in future meetings would feel inhibited (future policy-making).

18. On the other hand, the Cabinet Office noted in its comments of 4 December 2006 the following factor in favour of disclosure of the information:

*'members of the public would be interested in how decisions were made and are being made on this multimillion IT programme for improving NHS clinical care and efficiency'* (the transparency factor).

In his letter of complaint dated 5 July 2005 the complainant claimed that there were a number of factors in favour of disclosure of the information.

*'Publication of the deliberations of the seminar...would help to promote good practice, particularly in an area where non-adherence to principles of project*

*management is a frequent weakness highlighted in reports of the National Audit Office', and 'It would provide a strong incentive to NHS organisations to do their best to show that they are installing safe systems, and that their implementation does not disrupt the care and treatment of patients' (encouraging good practice).*

*'The seminar...was the most critical element in the programme...no information provided to Parliament on whether the risks of the NPfIT were fully understood or discussed at the seminar. There is indeed no mechanism for patients, other stakeholders including taxpayers, Parliament and the media, to know the basis of discussion which leads to the public funding of large and ambitious IT programmes' (accountability).*

*'[T]he advice and the outcome would inform debate on the largest public IT programme funded by the British Government' and 'would help millions of patients to understand decisions and discussions that could directly or indirectly affect them' (transparency).*

*'Publication would reveal information which would promote accountability and transparency', 'could help to tackle fraud and/or corruption', and 'may help to promote probity, competition and value for money'.*

19. The Commissioner notes that the information in this case was requested by the complainant approximately three years after the meeting which generated it. He considers that the passage of time is an important factor in reducing any prejudice which might arise from disclosure, and also that there must be strong arguments in favour of continuing to maintain an exemption long after the date of generation of the requested information. Against this factor, the Cabinet Office claimed in its letter of 4 December 2006 that:

*'there is a public interest argument against releasing the information because it would affect the behaviour of Ministers and officials in considering other projects in the future.'*

The Commissioner considers that such argument about the deterrent effect on future policy-making is too widely drawn to carry determinative weight in the overall balance of the public interest, since it implies that disclosure of any information relating to policy formulation at any subsequent stage would have the potential to prejudice future decision-making. The Cabinet Office also claimed that:

*'the issue of NHS IT was still very much a live issue at the time the request was made, and the matters discussed in the documents requested were therefore highly sensitive at a time when the government was in the early stages of implementing what is probably the world's largest civil IT programme.'*

While the Commissioner accepts that the ongoing significance of the issue of NHS IT does indeed keep live the factors in favour of maintaining the exemption, he also considers that it similarly continues to sustain those factors in favour of disclosure.

20. Having regard to all these factors, the Commissioner takes the view that there are strong public interest arguments in favour both of maintaining the section 35(1)



exemption and in disclosing the information at issue. In light of this, and the requirement to take account of “all the circumstances of the case”, he has given particular consideration to the specific nature of the information which is held by the Cabinet Office. In the view of the Commissioner, the public interest arguments for maintaining the exemption do not outweigh those for disclosing this information. His detailed reasoning follows.

21. In relation to that part of the information comprising an outline of the format and purpose of the seminar, the Commissioner takes the view that this is not essentially part of the policy briefing. For this reason he believes that the factors against favouring maintenance of the exemption, such as the assertion that disclosure might have a debilitating effect on free and frank advice and exchange of views, would have very little relevance. Furthermore, the Commissioner considers that the lapse of time since the meeting, which took place on 14 February 2002, would further diminish the relevance of these factors. On the other hand, he believes that the factors in favour of disclosure have not been so affected by the passage of time.
22. For information which contains an assessment of IT within the NHS, including the potential for modernisation, the Commissioner acknowledges that it may contain statements of fact and opinion. However, he does not consider that this has the status of policy advice or advocacy. Rather, it is principally a ‘technical’ outline of the context and possibilities within which policy is to be decided. As such, the Commissioner does not consider that the factors favouring maintenance of the exemption are particularly strong in relation to such information. He also notes that the Cabinet Office has already disclosed to the complainant some information of this nature – sections headed ‘Where we were’ and ‘Where we are now’ – on the grounds that it related to *‘background briefing for the meeting’*; and annexes A and B because they contained *‘information that describe NHS IT prior to the inception of the National Programme for IT’*.
23. The Commissioner accepts that there is other information which deals with the pros and cons of future options. The Commissioner considers that this is policy advice in which the assessment of risk may play some part, so that the factors identified by the Cabinet Office as supporting maintenance of the exemption – facilitating the frank provision of advice, and encouraging effective meetings of the same sort in the future – are relevant. Such arguments are more powerful where the information includes or reflects exchanges of views and advice and substantive debate over potential policy positions which go beyond an outline of the available options from a basically “technical” perspective. But, although the Commissioner has weighed the arguments carefully in relation to each part of the information, even these more powerful considerations are not determinative.
24. In weighing up the public interest factors the Commissioner has had regard to the case of *DfES v the Commissioner and the Evening Standard* (EA/2006/0006), in which the Information Tribunal laid down a number of principles to assess the public interest in cases involving the section 35 exemption. The Tribunal indicated that it was unimpressed with the argument that the threat of disclosure of civil servants’ advice would cause them to be less candid when offering their opinions. It concluded that *‘we are entitled to expect of [civil servants] the courage and independence that...[is]...the hallmark of our civil service’*, since civil servants are *‘highly educated*

*and politically sophisticated public servants who well understand the importance of their impartial role as counsellors to ministers of conflicting convictions'* and should not be easily discouraged from doing their job properly. Applying that approach to this case, the Commissioner does not believe that disclosure of the withheld information would make officials responsible for providing advice and recording information less likely to perform their duties properly. Such public servants would be in breach of their professional duty as public servants should they deliberately withhold relevant information or fail to behave in a manner consistent with the Civil Service Code. It is a matter for the bodies concerned to ensure that their officials continue to perform their duties according to the required standards.

25. The Tribunal also stated that *'No information within s35(1) is exempt from... disclosure simply on account of its status'*. The fact that the information relates to the deliberations of very senior officials or government Ministers does not of itself dictate that the information is sensitive, and *'To treat such status as automatically conferring an exemption would be tantamount to inventing within s 35(1) a class of absolutely exempt information'*. Furthermore, it declared that the public interest in maintaining the exemption is in protecting, from compromise or unjust public criticism, civil servants rather than ministers. The Tribunal asserted that it is not unfair to politicians to release information that allows the policy decisions they took to be challenged after the event.
26. The Commissioner is also mindful of the fact that the decision to modernise NHS IT was a 'historical' one at the time that the complainant made his request. In the case mentioned above the Tribunal stated that *'The timing of a request is of paramount importance'*. It decided that while policy is in the process of formulation it is highly unlikely that the public interest would favour disclosure, and both ministers and officials are entitled to hammer out policy without the *'threat of lurid headlines depicting that which has been merely broached as agreed policy'*. On the other hand, the Tribunal rejected arguments that once a policy had been formulated there was a policy cycle in which information about its implementation would be fed into further development of the policy, preferring instead the view that a *'parliamentary statement announcing the policy...will normally mark the end of the process of formulation'*.
27. In a further Tribunal case, *The Secretary of State for Work and Pensions v the Information Commissioner (EA/2006/0040)*, the Tribunal agreed that section 35(2) *'seemed to envisage policy formulation as a series of decisions rather than a continuing process of evolution'*. In that case, at the time of the request a Bill had been presented to Parliament which established the principle of introducing identity cards and paved the way for secondary legislation to establish the details of the scheme. The Tribunal considered that the process of policy formulation could be split into two stages: the high level decision to introduce identity cards, followed by policy decisions on the details of the scheme. The Tribunal decided that, since the information requested had been created to inform the high level policy, which had already been decided, this reduced the public interest in maintaining the exemption.
28. Having regard to the two Tribunal decisions referred to above, the Commissioner accepts that policy formulation and development is a series of separate decisions rather than a continuous process of evolution. In this case, the evidence is that the

high level policy had been decided by the time of the complainant's request on 5 January 2005:

- according to evidence given to a parliamentary committee by Sir John Pattison, Director of Research and Development at the Department of Health, the decision was taken at the meeting in February 2002, which was where the information requested in this case was generated;
- Sir John Pattison delivered a speech, which included a summary of the February meeting, to the Harrogate Healthcare computing conference in March 2002;
- the Wanless review of NHS finance, which recommended that the NHS double the proportion of its budget invested in information technology, was published in April 2002;
- the new NHS information technology programme was outlined in the document *'Delivering 21st Century IT Support for the NHS: National Strategic Programme'*, which was published in June 2002;
- the new post of National Information Technology Programme Director, responsible for negotiating the contracts for the programme, was filled in October 2002.

The Commissioner considers that the fact that the information requested in this case was 'historical' is a significant factor in counterbalancing the factors which weigh in favour of maintaining the exemption. He takes the view that, once a decision has been made on the policy to which requested information relates, the risk of prejudicing the policy process is likely to be much reduced. Furthermore, he notes that the issues raised in the withheld documentation have already been widely canvassed in the public domain.

29. While the preceding considerations diminish the weight of the factors in favour of withholding the information, the Commissioner considers that there are also a number of strong factors favouring disclosure of the information in this case:

- encouraging good practice and increasing public confidence that decisions have been taken properly and on the basis of the best available information;
- promoting policy-makers' accountability to the public;
- facilitating public understanding of how government formulates policy;
- facilitating a well-informed public debate on the issues;
- encouraging public participation in the development and formulation of government policy;
- broadening policy input beyond individuals or groups with an unduly privileged position of influence in policy-making processes.

In this case, these factors relating to the public's concerns have a particularly significant weight because the object of the policy – the NHS – is something of great interest and importance to the general public. Furthermore, the specific policy at issue involved the biggest public sector IT project in UK history and a very large expenditure of public money.

30. The Commissioner's view is that there must be some clear, specific and credible evidence that the formulation or development of policy would be materially altered for the worse by disclosure under the Act. Cases such as this do not set any sort of precedent. The Act requires that each case must be judged on its own merits. While the Commissioner recognises that the formulation and development of policy often require space for the free and frank exchange of views and advice, he has concluded that there are strong public interest factors in accountability, confidence and participation which favour disclosure of the information in this case. He has had particular regard to the historical nature of the information. His formal conclusion is therefore that the information which was withheld by the Cabinet Office should be disclosed, on the basis that the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

## The Decision

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31. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act.

**Section 21** – the Cabinet Office was correct to maintain this exemption in respect of the information which it identified in its letter of 7 March 2005 as being publicly available, and the Commissioner considers that the second article in the *Health Affairs* journal – which he notes the Cabinet Office failed to address in its communications with the complainant – was also exempt under this section.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act.

**Section 1(1)(a)** – the public authority failed to give the complainant adequate written notification about whether it held information of the description specified in the request.

**Section 17(3)** - the Cabinet Office did not comply with its obligations under section 17(3) of the Act since it failed to give a proper assessment of the public interest factors in favour of disclosure.

**Section 35(1)(a) and (d)** – the information withheld by reference to section 35 was incorrectly withheld by the Cabinet Office since the balance of the public interest favoured disclosure of it.

## Steps Required

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32. In accordance with its duty under section 1(1) of the Act, the Commissioner requires the Cabinet Office to disclose the information identified in the Schedule.
33. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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34. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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35. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 13th day of August 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Appendix

### Freedom of Information Act 2000

**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...'*

**Section 17(1)** provides that –

*'A public authority which...is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –*

*(a) states that fact,  
(b) specifies the exemption in question, and  
(c) states (if that would not otherwise be apparent) why the exemption applies.'*

**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 35(1)** provides that –

*'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –*

*(a) the formulation or development of government policy,  
(b) Ministerial communications,  
(c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or*

*(d) the operation of any Ministerial private office.'*

**Section 36(2)** provides that –

*'Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –*

- (a) would, or would be likely to, prejudice –*
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or*
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or*
  - (iii) the work of the executive committee of the National Assembly for Wales,*
- (b) would, or would be likely to, inhibit-*
  - (i) the free and frank provision of advice, or*
  - (ii) the free and frank exchange of views for the purposes of deliberation, or*
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'*