

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 18 December 2007

Public Authority: Northern Ireland Office
Address: Stormont Castle
Belfast
BT4 3TT

Summary

The complainant requested information about communications between the Northern Ireland Office (the 'NIO') and Maybin Support Services NI Ltd ('Maybin'), since renamed "Resource". The NIO released some information in response to the request, and released further information following the Commissioner's intervention, but withheld the remainder. The NIO initially relied on the exemptions under sections 40(2), 42 and 43(1), but during the course of the Commissioner's investigation the NIO withdrew reliance on section 42 and claimed reliance on sections 31(1)(b), 38(1) and 36(2)(c). As a result of the complainant narrowing the scope of his request, the Commissioner's decision relates solely to the information withheld under sections 31(1)(b) and 43(1). This includes information relating to a tender exercise run by the NIO, and information relating to Maybin's security licence.

The Commissioner finds that the exemption under section 31(1)(b) is not engaged. The Commissioner finds that the NIO had correctly applied the exemption under section 43(1) to all of the withheld information, but that the public interest lay in disclosing some of the information rather than maintaining the exemption. The Commissioner therefore requires the NIO to release some of the withheld information to the complainant.

The Commissioner also found that the NIO failed to respond within the statutory time limit, and so breached sections 10(1) and 17(1) of the Act.

The Commissioner's Role

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

2. The complainant has advised that on 24 August 2006 he requested the following information from the NIO under section 1 of the Act:

“All communications, including emails, between Maybin and the Northern Ireland Office this year.”
3. The complainant did not receive any response to this request, and he contacted the NIO again on 11 January 2007 to ask when the request would be dealt with.
4. The complainant contacted the Commissioner on 18 January 2007 to complain that he had not received a response from the NIO. The Commissioner contacted the NIO on 30 January 2007 and reminded it of its obligations under the Act.
5. The NIO wrote to the complainant on 20 February 2007, apologising for the delay in responding to his request. The NIO advised the complainant that it was releasing nine documents relevant to his request, comprising the following information:
 - i) a security licence application submitted by Maybin, with names and contact details of Maybin staff redacted
 - ii) a copy of Maybin's security licence with dates redacted
 - iii) Correspondence between Maybin and the NIO relating to the NIO's offer to extend Maybin's contract to provide services to the Northern Ireland Court Service (the 'Court Service') and the Public Prosecution Service for Northern Ireland (the 'PPS')
 - iv) Template information provided to all tenderers by the NIO in relation to the tender process
6. The NIO advised the complainant that it held further information, but that all of this information (the 'withheld information') was exempt under sections 40, 42 and 43 of the Act.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 24 February 2007 to complain about the NIO's response to his request. Although the NIO offered an internal review, the complainant asked the Commissioner to waive this requirement and to investigate his complaint. Given the length of time the NIO had taken to provide a response to the complainant, the Commissioner considered it reasonable to commence an investigation in this case.

8. The complainant was aware that the Commissioner had recently dealt with a similar complaint regarding the NIO breaching the time limit for response¹, and he was therefore content to limit the scope of the case to whether or not the NIO had wrongly withheld information from him.
9. Although the Act is motive-blind, the Commissioner was aware of the circumstances surrounding Maybin (which has since been renamed "Resource"), and the NIO at the time of the complainant's request. Maybin was at this time the largest security firm in Northern Ireland, and was contracted by the NIO to provide security staff for the Court Service and the PPS. In early August 2006 Maybin confirmed that it had been operating without a valid security licence, in contravention of the Terrorism Act 2000, which requires that anyone offering or providing security guard services for reward to obtain a licence from the Secretary of State. Licences are granted for a period of one year, and are not automatically renewed. Provision of security guard services without a licence is an offence punishable by 5 years' imprisonment, and at the time of the request it was a matter of public record that the NIO had passed information to the Police Service for Northern Ireland (the 'PSNI') for possible investigation of an offence.
10. The complainant advised the Commissioner that, although he was specifically interested in receiving information relating to the licencing issue, he had made a broad request as he was not sure what information the NIO held which was relevant.

Chronology

11. The Commissioner contacted the NIO on 21 March 2007 to advise it of the complaint, and to request sight of the withheld information.
12. The NIO provided the Commissioner with most of the withheld information on 11 April 2007, but the Commissioner noted that several pieces of information had not been included. (The missing information was provided to the Commissioner on 26 June 2007, and at this stage the NIO confirmed that it did not hold any other information which fell within the scope of the complainant's request.)
13. The Commissioner also asked the NIO for a detailed explanation of its reliance on the exemptions under sections 40, 42 and 43 of the Act in relation to the withheld information.
14. The NIO provided a detailed submission to the Commissioner on 4 April 2007, which included an explanation of the information held. The NIO advised the Commissioner that at the time of the complainant's request the NIO had been running a tendering process for provision of security guarding services, and Maybin had submitted a tender. The NIO therefore confirmed to the Commissioner that it held information about the tender process and Maybin's tender submission (the 'tender information'), as well as information about the security licence issue (the 'licence information').

¹ Decision Notice reference FS50144942

15. At this stage the NIO advised the Commissioner that, having re-considered the withheld information, it was of the view that some of it could now be provided to the complainant. The NIO also advised the Commissioner that the information originally withheld under section 42 of the Act was in fact considered to fall outside the scope of the complainant's request.
16. In relation to the remaining withheld information, the NIO confirmed to the Commissioner that it had applied the exemption under section 43(2) to all of the information. The NIO advised that it had also applied the exemption under section 40(2) to personal information relating to individuals including major Maybin shareholders and employees, and NIO staff. The NIO provided further details about its reliance on both exemptions, which is summarised below.

Section 43 exemption

17. The NIO explained to the Commissioner that it sought to apply this exemption because disclosure of the withheld tender information would be likely to prejudice the commercial interests of Maybin. The NIO advised that the tender process may be re-run, and if this was the case then the disclosure of Maybin's tender submission would put that company at a significant disadvantage compared with other companies.
18. The NIO also explained its view that disclosure of the withheld licence information would prejudice Maybin's commercial interests. The NIO claimed to the Commissioner that disclosure of this information could deter companies from engaging honestly with the NIO about security licences in the future. The NIO also argued that speculation about a company's security vetting status might damage the reputation and commercial viability of the company concerned.

Public interest test

19. Section 43(2) is a qualified exemption and therefore subject to the public interest test. The NIO did not at this stage elaborate on its public interest arguments in relation to the exemption under section 43(2) of the Act. The Commissioner noted however the NIO's comments in its refusal notice of 20 February 2007.
20. The NIO considered that the public interest would be best served by maintaining the exemption under section 43(2). The NIO argued that disclosure of the date when Maybin's security licence expired, the date on which Maybin applied for a new licence, and the date on which the new licence was granted, would leave Maybin vulnerable to commercial exploitation. For this reason the NIO was of the view that the public interest in maintaining the exemption outweighed that in disclosing the information.

Section 40(2)

21. The NIO confirmed to the Commissioner that it had applied the exemption under section 40(2) to personal information relating to a number of individuals. These included Maybin major shareholders and employees, as well as NIO staff. In the case of Maybin major shareholders and employees, the information included dates of birth, National Insurance numbers and home addresses. In the case of NIO staff, the information comprised the name, job title and contact details. The NIO argued that disclosure of personal information relating to Maybin major shareholders would breach the first data protection principle² (the requirement that personal data be processed fairly and lawfully).
22. The NIO also argued to the Commissioner that it had a duty to protect personal information, and that disclosure could increase the risk of identity theft.

Informal resolution

23. Having considered the NIO's submissions to date, the Commissioner wrote to the NIO on 11 September 2007 to indicate his preliminary views in relation to each piece of withheld information. The Commissioner suggested to the NIO that much of the withheld information could be provided to the complainant, and asked the NIO to consider whether this complaint could be informally resolved.
24. The NIO wrote to the Commissioner on 3 October 2007 and advised that, in response to the Commissioner's comments, it would release some more of the withheld information to the complainant. This information comprised the information referred to at paragraph 5(iii) above, with some of the earlier redactions removed. It therefore included the following information:
 - i) A series of emails dated March 2006 relating to the tender process (with names redacted)
 - ii) Correspondence between the NIO and Maybin relating to the extension of the Court Service and PPS contracts (with names redacted)
25. The NIO indicated to the Commissioner that it did not accept the recommendations in relation to the remainder of the withheld information, and provided further arguments in relation to its reliance on the exemptions under sections 43(2) and 40(2). In addition, the NIO advised the Commissioner that it was now seeking to rely on a number of further exemptions in relation to some of the withheld information. The NIO confirmed to the Commissioner that it had advised the complainant of the additional exemptions, and the reasoning behind this decision.

Additional exemptions applied

Section 21

26. The NIO had originally sought to withhold the names of major Maybin shareholders under section 40(2) of the Act. However, following the Commissioner's intervention the NIO reconsidered its view. The NIO

² As set out in Schedule 2 to the Data Protection Act 1998

acknowledged to the Commissioner in its letter of 3 October 2007 that the names of major Maybin shareholders and directors were already in the public domain and accessible via Companies House. The NIO advised the Commissioner of its view that this information could therefore be withheld in reliance on the exemption under section 21 of the Act (information reasonably accessible to the applicant). However, the NIO advised the Commissioner that it had now disclosed this information to the complainant.

Section 31(1)(b)

27. In its letter of 3 October 2007 the NIO advised the Commissioner that, following consultation with the PSNI and PPS, it had reached the view that the date on which Maybin's security licence expired, the date on which Maybin applied for a new licence, and the date on which the new licence was granted, were exempt under section 31(1)(b) of the Act.
28. This exemption is engaged if disclosure of the information would, or would be likely to, prejudice the apprehension or prosecution of offenders. However, the Commissioner was not satisfied from the NIO's letter of 3 October that the NIO had provided him with sufficient evidence to support this view, and so the Commissioner invited the NIO to make a further submission.
29. On 14 November 2007 the NIO advised the Commissioner of its view that disclosure of the information set out at paragraph 27 above, could encourage media speculation, which might have an adverse impact on any criminal trial. The NIO drew the Commissioner's attention to the right to a fair trial in accordance with Article 6 of the European Convention on Human Rights. The NIO accepted the disclosure of the information itself may not lead to publicity, but pointed out to the Commissioner that the complainant in this case is a journalist.
30. The NIO also advised the Commissioner that disclosure of this information would constitute public confirmation as to whether or not Maybin had been operating without a licence, and therefore committing a criminal offence. The NIO argued that confirmation would make it more difficult for the PPS to decide whether or not to bring a prosecution in the case.

Sections 38(1) and 36(2)(c)

31. In its letter of 3 October 2007 the NIO also advised the Commissioner that it was now seeking rely on two more exemptions in relation to the identities of NIO and Maybin staff. The exemption under section 38(1) is engaged if the disclosure of information would, or would be likely to, endanger the physical or mental health or safety of any individual. The exemption under section 36(2)(c) is engaged if the disclosure of information would prejudice the effective conduct of public affairs.
32. The NIO wrote to the complainant on 3 October 2007 to advise him of its revised view and additional exemptions applied. However, the complainant advised the Commissioner that he was not interested in receiving personal information relating to NIO or Maybin staff. The complainant confirmed to the Commissioner

that he was content for this information to be excluded from the scope of his request.

33. In light of the complainant's clarification the Commissioner advised the NIO that he would not pursue this aspect of the complaint. Therefore the Commissioner's decision in this case relates solely to the remaining withheld information, which comprises the withheld tender information (Maybin's tender submission) and the withheld licence information (the date on which Maybin's security licence expired the date on which Maybin applied for a new licence, and the date on which the new licence was granted).

Analysis

Procedural matters

Time for compliance

34. In order to comply with section 10(1) of the Act, the NIO ought to have responded to the complainant promptly, and in any event not later than twenty working days following the date of receipt of the request. In this particular case the NIO ought to have responded by 25 September 2006, but in fact it did not respond to the complainant until 20 February 2007.
35. The NIO advised the Commissioner that it did not receive the complainant's request of 24 August, and the complainant has only provided evidence that the emails were sent to the NIO email address. In any event, the Commissioner notes that the complainant reminded the NIO of his request on 11 January 2007, but that the NIO did not provide him with a substantive response. Therefore even if the Commissioner accepted 11 January 2007 as the date of the request, the NIO response would still have breached section 10(1).

Refusal notice

36. Where a public authority refuses a request for information it is required under section 17 of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon.
37. In addition, where the public authority is seeking to rely on a qualified exemption (one subject to the public interest test) it must provide details of the public interest arguments considered for and against disclosure of the requested information. The authority must also explain the balance of these competing arguments.
38. The Commissioner notes that the NIO's refusal notice of 20 February 2006 did not provide sufficient detail on the application of the exemptions to the withheld information. As required under section 17(1), the NIO did identify the exemptions under sections 40, 42 and 43 as applying to the withheld information. However, the NIO subsequently identified the information it considered exempt under section 42 as falling outside the scope of the complainant's request. In addition,

in October 2007 the NIO sought to introduce the exemptions under sections 31(1)(b), 36(2)(c) and 38(1) in relation to the withheld information.

39. In light of the above, the Commissioner finds that the NIO failed to provide the complainant with an adequate refusal notice. The notice of 20 February 2007 did not include all of the exemptions subsequently relied upon, nor did it explain adequately why the exemptions cited were applicable to the information which was being withheld. Therefore the Commissioner concludes that the NIO failed to comply with section 17(1) of the Act.

Exemptions applied

40. For the reasons set out at paragraph 33 above, the Commissioner's decision in this case relates solely to the information withheld in reliance on the exemptions under sections 31(1)(b) and 43(2) of the Act.

Section 31(1)(b): prejudice to the apprehension or prosecution of offenders

41. The Commissioner has considered carefully the NIO's submissions, which can be summarised as arguing that disclosure of the licence information would prejudice the PPS's ability to decide whether or not to bring a prosecution. If the PPS did bring such a prosecution, disclosure of this information could lead to "trial by media".
42. The Commissioner is of the view that the NIO should not have taken the occupation of the requester into account when considering whether or not to release the requested information. The Act is motive-blind, and authorities may not take personal information about the requester into account when deciding how to respond. The requester serves as a conduit for the public domain, and releasing information to an individual under the Act is equivalent to placing the information in the public domain.
43. In any event, the Commissioner is not satisfied that the NIO has considered the withheld information in relation to the provisions of the exemption under section 31(1)(b) of the Act. This exemption applies where disclosure of information would, or would be likely to, prejudice the apprehension or prosecution of offenders. In considering the question of likelihood of prejudice, the Commissioner has been assisted by the Information Tribunal's decision in the case of *John Connor Press Associates Limited v The Information Commissioner*. The Tribunal confirmed that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk."³ The Commissioner notes the Tribunal's view in subsequent cases that public authorities are not expected to prove that something will happen if the information in question is disclosed. However, the Tribunal has clarified in subsequent cases that unsupported speculation or opinion does not provide sufficient evidence of the likelihood of prejudice⁴.

³ Appeal no EA/2005/0005, paragraph 15

⁴ *Hogan v Oxford City Council & The Information Commissioner*, Appeal no EA/2006/0068 & 0080

44. In this particular case the NIO has argued that disclosure of the information would make it more difficult to prosecute offenders. However, the Commissioner notes that significant information relating to Maybin's security licence is already in the public domain. Maybin confirmed in August 2006 that it had been operating without a security licence, and it was reported in October 2006 that Maybin had been in this position for "about 10 months". In light of this the Commissioner is not satisfied that the withheld information would cause any additional problems for the PPS in deciding whether or not to bring a prosecution. Rather, disclosure would merely serve to confirm the period during which Maybin was operating without a licence, and the length of time it took for the NIO to process Maybin's application for a new licence.
45. The Commissioner is mindful that the PPS is required to decide whether or not to bring a prosecution. According to the PPS's Code for Prosecutors, the Public Prosecutor must analyse and evaluate all of the evidence and information submitted in a thorough and critical manner. This requires consideration of all the evidence available, as well as consideration of whether a prosecution is required in the public interest⁵. The Commissioner does not consider that disclosure of this particular information could render the PPS unable to assess the evidence independently, as argued by the NIO. Therefore, the Commissioner does not accept that disclosure of the information would prejudice the prosecution of offenders.
46. For the reasons set out above the Commissioner is satisfied that the exemption under section 31(1)(b) is not engaged in relation to the withheld information. Therefore the Commissioner is not required to consider the public interest arguments in relation to this exemption.

Section 43(2): prejudice to the commercial interests of any person

47. This exemption is engaged if disclosure of the information would, or would be likely to, prejudice the commercial interests of any person, including the public authority. The NIO argued to the Commissioner that both the withheld tender information and the withheld licence information were exempt, as disclosure would prejudice Maybin's commercial interests.

Tender information

48. The Commissioner is mindful of the fact that at the time of the complainant's request the NIO was running a tendering exercise for provision of security guarding services. This was subsequently cancelled, and the NIO has confirmed to the Commissioner that it intends to re-run the tendering exercise.
49. The Commissioner is of the view that tender submissions are often commercially sensitive, and that sensitivity decreases after the tender process is complete. In this particular case, the tendering exercise carried out in 2006 is not complete, as it is the subject of legal action, and the NIO intends to conduct a fresh tender

⁵ PPS Code for Prosecutors, page 8

exercise. Therefore the Commissioner is satisfied that the exemption under section 43(2) is engaged in relation to the tender information.

Licence information

50. As discussed extensively above, the Commissioner is aware of the interest in, and sensitivities surrounding, Maybin's security licence. The fact that Maybin had been operating without a security licence is obviously damaging to the company's reputation, and the Commissioner is satisfied that disclosure of the withheld licence information would be likely to prejudice Maybin's commercial interests. Therefore the Commissioner is satisfied that the exemption under section 43(2) is also engaged in relation to the licence information.

Public Interest Test

51. Under section 2(2)(b) of the Act, exempt information must still be disclosed unless, in all the circumstances of the particular case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Commissioner must therefore consider the arguments for and against disclosure of the withheld information, and must decide how the public interest is best served in this case.

Tender information

52. The NIO has argued that disclosure of the withheld tender information would prejudice Maybin's commercial interests because it would disadvantage Maybin when the tender exercise is re-run.
53. The Commissioner is of the view that there is generally a strong public interest in authorities being publicly accountable for the decisions they make and the money they spend. A contract to provide security guard services for the PPS and the Court Service would be worth a considerable amount of public money, and it is in the public interest to understand how the contract is awarded.
54. The Commissioner notes that Maybin submitted its tender application to the NIO on 30 July 2006, and that the complainant made his request on 24 August 2006. The Commissioner considers that the information supplied by Maybin would have been highly sensitive at the time of the complainant's request, as the tender had not been awarded at that stage. The Commissioner would normally expect sensitivity and risk of prejudice would decrease over time, after a contract is awarded.
55. However, the Commissioner is mindful of the fact that the tender process is the subject of ongoing litigation, and is therefore satisfied that tender submissions made to the NIO in 2006, although now over a year old, were sufficiently sensitive at the time of the complainant's request to prejudice Maybin's ability to participate in a future tender exercise. The Commissioner notes that Maybin had indicated to the NIO in its submission that it considered the information would remain sensitive up to six months after the tendering process finished. In addition, if one tender submission (out of all those received by the NIO) was to be made public,

then that tenderer would be put at a significant disadvantage when the tender process was re-run.

56. For the reasons set out above, the Commissioner is satisfied that there is a strong public interest in maintaining the exemption in this particular case. Although it is important for public authorities to be open and transparent about the contracts they award, the tendering process is worthy of protection while it is incomplete. In this particular case, the Commissioner is of the view that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Therefore the Commissioner is satisfied that the NIO correctly withheld the tender information in reliance on the exemption under section 43(2) of the Act.

Licence information

57. Similarly, the NIO has argued to the Commissioner that disclosure of the withheld licence information would prejudice Maybin's commercial interests because it would undermine Maybin's reputation and could be exploited by competitors.
58. The Commissioner is aware that there had been considerable media speculation about Maybin's security licence in the period preceding the complainant's request, and the NIO had confirmed to the media on 3 August 2006 that Maybin had been operating without a valid security licence. Therefore the NIO had already placed information in the public domain that could prejudice Maybin's commercial interests. The NIO subsequently claimed to the Commissioner that disclosure of the licence information may lead to publication in the media, which could lead to adverse publicity.
59. The Commissioner is of the view that potential impact of media interest in an issue is not in itself a valid reason to withhold information which would inform the public. Any information which is placed in the public domain may be published in any form, and it is important not to deny the public access to information simply because it will be reported and commented on. In this particular case the information relates to whether or not the security firm providing security services to the PPS and Court Service was itself committing a criminal offence by operating without a valid security licence. The Commissioner considers that this is clearly an issue of significant public importance, and information should not be withheld simply to avoid public comment.
60. However, the Commissioner is also mindful of the fact that what interests the public is not necessarily the same as what is in the public interest. If a company's reputation is at risk by disclosure of information, then it must be carefully considered whether that information ought to be in the public domain. The provision of security guarding services is both high-profile and sensitive in itself, especially as to offer this service without the requisite licence is a criminal offence.
61. The Commissioner's decision must take account of the circumstances at the time of the complainant's request: should the licence information have been disclosed on 24 August 2006? As discussed in paragraph 44 above, the NIO had already

confirmed publicly at that stage that Maybin had been operating without a valid security licence, and that it had passed this matter to the PSNI for investigation.

62. The Commissioner is aware that disclosure of the licence information might be embarrassing for both Maybin and the NIO. However, information may only be withheld if the public interest favours doing so, and there is a strong public interest in the public being adequately informed about issues of the day. In this case it is already a matter of public knowledge that Maybin was operating without the required licence. The Commissioner is of the view that disclosure of the withheld information would further inform the public, rather than cause significant harm.
63. The Commissioner does not accept the NIO's argument that disclosure of the licence information would discourage companies from engaging honestly with the NIO about security licences in the future (as set out at paragraph 18 above). The Terrorism Act 2000 requires that anyone offering or providing security guard services for reward must obtain a licence from the Secretary of State, and failure to comply is a criminal offence punishable by five years' imprisonment. Clearly this is a serious offence, and the Commissioner is not persuaded that a company would risk committing an offence of this nature simply because it feared that its contact with the NIO would be made public. Therefore the Commissioner does not accept that companies would be discouraged from engaging with the NIO if the withheld information were to be disclosed.
64. The Commissioner acknowledges that this is a sensitive issue, and is of the view that there are strong competing public interest arguments both for and against disclosure of the licence information at the time of the complainant's request. However, the Commissioner is mindful that there is a presumption of openness running through the Act, and where the public interest test is evenly balanced, the public interest favours disclosure. The Commissioner is not satisfied that the public interest in maintaining the exemption outweighed the public interest in disclosing the licence information at the time of the complainant's request. Therefore, although the Commissioner is satisfied that the exemption under section 43(2) was engaged in relation to the licence information, the Commissioner is satisfied that the balance of public interest lay in disclosing the information. The Commissioner concludes that the NIO failed to consider properly the public interest factors in this case.

The Decision

65. The Commissioner's decision is that the NIO did not deal with the request for information in accordance with the Act in a number of respects:
 - section 1, in that the NIO failed to communicate some of the information requested to the complainant;
 - section 10, in that the NIO failed to respond to the complainant's request within the specified time limit;

- section 17(1), in that the NIO later claimed reliance on several exemptions not originally included in its refusal notice
66. The Commissioner finds that the exemption under section 31(1)(b) is not engaged in relation to the licence information, and that the NIO wrongly sought to rely on this exemption.
 67. The Commissioner finds that the NIO correctly applied the exemption under section 43(2) to all of the withheld information, namely the information provided by Maybin as part of its tender submission, and the dates on which Maybin applied for, and was granted, its licence.
 68. The Commissioner also finds that, in relation to the withheld tender information, the public interest in maintaining the exemption does outweigh the public interest in disclosing the information.
 69. However, in relation to the withheld licence information the Commissioner is of the view that the public interest in maintaining the exemptions does not outweigh the public interest in disclosure of the information.
 70. In light of the above, the Commissioner finds that the NIO wrongly withheld some information from the complainant.

Steps Required

71. The Commissioner is mindful of the fact that the complainant has now received the majority of the information requested. However, the Commissioner is satisfied that the licence information referred to at paragraph 33 above was withheld wrongly, and ought to have been disclosed to the complainant at the time of his request.
72. The Commissioner therefore requires the NIO to provide the withheld licence information to the complainant within thirty five days of the date of this notice.

Failure to comply

73. 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

74. 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

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 18th day of December 2007

Signed

**Marie Anderson
Assistant Information Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

- (1) 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.

2. **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.

3. **Section 31(1)** provides that –

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

4. **Section 36(1)** provides that –
This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

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.

5. **Section 38** provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

6. **Section 40** provides that:

(1) 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.

(2) 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.

(3) The first condition is-

(a) 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-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) 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.

(4) 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).

7. **Section 42(1)** provides that –

Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

8. **Section 43(2)** provides that –

Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).