

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 March 2011

Public Authority: Imperial College Healthcare NHS Trust
Address: St Mary's Hospital
Praed Street
London
W2 1NY

Summary

The complainant made 26 sets of requests for information under the Freedom of Information Act 2000 concerning the treatment of her late mother. The public authority replied to some of the requests, but believed sections 14(1) [vexatious requests] and 14(2) [repeated requests] applied to most of them and so it did not answer them.

The Commissioner considered this case carefully and decided that:

- (1) some of the requests were for information that if held would constitute the complainant's own personal data and therefore this information is exempt under section 40(1) of the Act;
- (2) with regard to requests one to six some information was provided, some was not held and other information was exempt by virtue of sections 40(2), 40(5)(b)(i) and 21(1); and
- (3) the last 19 sets of requests (those dated 9 December 2009 onwards) were vexatious.

The Commissioner has also found a number of procedural breaches, but requires no remedial steps to be taken in this case for the reasons outlined in this Notice.

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.

Background

2. The complainant is dissatisfied with the treatment her late mother received from the public authority. She has made formal complaints about the care provided to her mother and the responses were communicated to her on 22 June 2009, 3 December 2009 and 26 February 2010.

The Requests

3. The Commissioner has considered all relevant correspondence and has identified 26 sets of requests that have been made by the complainant. A set of requests can have up to forty elements within it. The Commissioner has set out a schedule of the relevant correspondence in Annex A and he will provide a table with the full set of correspondence to both sides separately. However, it is useful to provide an outline the dates of the requests and an overview of the public authority's initial responses:

Request number	Date of request	Public authority's position at commencement of Commissioner's investigation
1	26 August 2009.	Request not recognised
2	29 August 2009 (1).	Request not recognised
3	29 August 2009 (2).	Request not recognised
4	7 September 2009.	Request not recognised
5	12 November 2009.	Request partially answered. Some information was provided, some information was withheld under section 40(2) [third party personal data], some information was not held, some of the requests were not valid and some information withheld under section 21(1).
6	4 December 2009.	Request not recognised

7	9 December 2009 (1).	Request is vexatious
8	9 December 2009 (2).	Request not recognised
9	9 December 2009 (3).	Request not recognised
10	11 December 2009.	Request is vexatious and/or repeated
11	24 December 2009.	Request not answered
12	24 December 2009 (2)	Request not answered
13	4 January 2010.	Request not answered
14	26 January 2010.	Request is vexatious
15	22 February 2010.	Request not recognised
16	9 March 2010.	Request not answered
17	19 April 2010.	Request answered
18	4 May 2010 (1).	Request not answered
19	4 May 2010 (2).	Request not answered (because the subject matter was under consideration by the Commissioner).
20	7 May 2010 (1).	Request not answered
21	7 May 2010 (2).	Request not answered
22	12 May 2010.	Request partially answered. Some information was said to be third party personal data and withheld under section 40(2) and some information had already been provided [section 21(1)].
23	17 May 2010.	Request not answered
24	20 May 2010.	Request not answered (because the subject matter was under consideration by the Commissioner)
25	14 June 2010.	Request not answered
26	14 July	Request not answered

	2010.	
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4. It is also useful to outline the public authority's position at the time of drafting this Notice.

- Request 1 The request has been answered. The public authority explained that the individuals were never suspended and that all the relevant recorded information that it holds about the complainant's mother's treatment can be found in the medical records that have been provided to her. It explained that it held no further relevant recorded information. It therefore applied section 21(1) to the information that has already been provided to the applicant.
- Request 2 The public authority holds no relevant recorded information in respect to this request.
- Request 3 The public authority explained that [Individual E redacted] has a supervisory role over the doctors that were responsible for her mother's care. There was therefore no mention of [Individual E redacted] in the medical records. No further recorded information was held in respect to that request.
- Request 4 The request is for the complainant's own personal data and therefore section 40(1) applies to it.
- Request 5 (has 22 elements)¹:
 1. Requests 5(1), 5(4) – 5(6), 5(12) and 5(22) were answered in full;
 2. It held no relevant recorded information for Requests 5(7) - 5(11), 5(13) - 5(15) and 5(21);
 3. Requests 5(2), 5(3), 5(18) and 5(19)(i) amounted to third party personal information and were being withheld under section 40(2);
 4. Request 5(19)(ii) and 5(20) were requests for the complainant's own personal data and was exempt from disclosure under section 40(1). It also stated that the questions reflected what the complainant believed and this did not reflect the public authority's view of the matter;

¹ The Commissioner has marked the elements of the request using the following notation – element one of request 5 would have the notation request 5(1).

5. Request 5(16) – the public authority explained that its view was that its issuing of a Do Not Resuscitate order was in line with national guidelines and was done properly; and
 6. Request 5(17) – the public authority explained that it believed that the [Individual C redacted] was informed about it.
- Request 6
 1. Requests 6(1) and 6(2): the Trust did not hold any recorded information in respect to them.
 2. Requests 6(3) to 6(4) asked for the complainant's own personal data and therefore section 40(1) applies to them. However, the public authority has also offered an explanation about its position outside the requirements of the Act.
 - Requests 7 to 26:
 1. Requests for the complainant's own personal data are withheld by virtue of section 40(1); and
 2. The remainder of information is withheld because the requests are vexatious and section 14(1) can be appropriately applied to them.

The Investigation

Scope of the case

6. On 27 October 2009 the complainant contacted the Commissioner to complain about the way her requests for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's alleged failure to answer all her questions.
7. At this stage, the public authority had not provided answers to a number of the requests for information and the Commissioner wrote to the public authority to ensure that it provided an appropriate response.
8. Further correspondence passed between the Commissioner, the complainant and the public authority. On 4 May 2010 the complainant renewed her complaint and explained that she wanted all the questions that she had asked to be answered.

9. On 2 August 2010 the Commissioner had a detailed conversation with the complainant. It appeared that she was prepared to limit the investigation to just six items. The Commissioner wrote to the complainant to confirm what was agreed.
10. On 9 August 2010 he received a response. The complainant now explained that she continued to require all the questions answered under the Act. The Commissioner has therefore been required to consider the public authority's compliance with all 26 sets of requests in this case.
11. The issues that form the scope of the Commissioner's investigation are as follows:
 1. Whether any of the requests were for the complainant's own personal data, which is exempt under section 40(1)²;
 2. Whether section 14(1) can be applied appropriately to requests 7 – 26 in this case;
 3. Whether sections 40(5)(b)(i) and/or 40(2) can be applied appropriately to requests 5(2), 5(3), 5(18) and 5(19);
 4. Whether section 21(1) can be applied where appropriate in respect to request 1;
 5. Whether further relevant recorded information is held in relation to requests 1, 2, 3, 5(7), 5(8), 5(9), 5(10), 5(11), 5(13), 5(14), 5(15), 5(16), 5(17)(i), 5(21), 6(1) and 6(2); and
 6. To note all the procedural breaches of the Act in this case.
12. The Commissioner has determined that some of the requests outlined in paragraph 22 of this Notice relate to information that, if held, would constitute the complainant's own personal data. He therefore believes that these elements of the request should have been considered as a Subject Access Request (SAR) under section 7 of the Data Protection Act 1998 (the 'DPA'). The public authority has now processed these requests for information under the DPA and the Commissioner will conduct his assessment in due course.
13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. For

² All provisions in this Notice can be found in full in Annex 2 – the Legal Annex

example, the Commissioner is not able to make any judgment about the complainant's allegations about the treatment of her late mother. In addition, the Act only applies to information that is held in recorded form. There is no obligation under the Act to answer questions where no relevant recorded information is held.

Chronology

14. The Commissioner wrote to the complainant and the public authority to explain that he had received an eligible complaint on 19 May 2010.
15. On 24 May 2010 the public authority telephoned the Commissioner. It explained that it would send the full complaint file to him to enable the complaint to be seen in its context. The Commissioner telephoned the public authority on 29 July 2010 to remind it to provide that information.
16. On 23 August 2010 the Commissioner received a copy of the full complaint file from the public authority.
17. On 15 September 2010 the Commissioner wrote to the public authority with detailed enquiries.
18. On 14 October 2010 the public authority provided the Commissioner with its arguments. It explained that it had now issued a new response to the complainant and provided the Commissioner with a copy of it. It also said it would consider the requests under the DPA and it did so on 20 October 2010. It presented its detailed submissions about why it believed that the exemptions applied in this case. These submissions will be considered in detail in the analysis section below.
19. On 15 November 2010 the Commissioner received a paper copy of the response alongside the attachments that were required to illustrate its arguments.
20. The complainant also contacted the Commissioner a number of times and the Commissioner replied that he would consider the case in accordance with the Act. For example, on 26 November 2010 the Commissioner received a CD along with a large number of further requests made to the Trust. He replied on 7 December 2010 to confirm the nature of his investigation.

Analysis

Exemptions

1. *Section 40(1)*

21. The Commissioner is the Regulator of both the Act and the DPA and in his view it is important that information is considered under the correct regime at first instance.
22. Section 40(1) provides an absolute exemption for information, which if held, would constitute the complainant's own personal data. The Commissioner wrote to the public authority to explain that he believed that a number of the requests were the complainant's own personal data and asked the public authority to consider them under the DPA. The public authority agreed with the Commissioner's suggestions and did so. The Commissioner has determined that the following requests are for information, which if held, would amount to the complainant's own personal data:
 - Request 4;
 - Request 5(17)(ii), 5(19)(ii) and 5(20);
 - Request 6(3) and (4);
 - Request 9(3);
 - Request 11(19)(ii);
 - Request 14 (class one);
 - Request 18 (class one);
 - Request 19; and
 - Request 20 (class one).
23. The Commissioner considers that the information, if held, can be linked to the complainant who is an identifiable individual. It is therefore the complainant's own personal data and is exempt under section 40(1). The Commissioner will consider this information no further in this Notice because only one exemption needs to be applied appropriately under the Act.

2. *Section 14(1)*

24. The principal issue that the Commissioner has been asked to determine is whether the requests 7 to 26 have been correctly characterised as being vexatious. The Commissioner will consider each request. The lead requests are requests 7 to 9 which were all submitted on 9 December 2009. He will then decide whether the same reasoning can

apply to the other requests for information that were submitted by the complainant subsequently.

25. The public authority contends that the requests are vexatious when correctly considered in their context and that it should be entitled to rely on section 14(1). The Commissioner will consider its detailed arguments below.
26. The complainant argues that her requests are not vexatious and that a reasonable public authority could not rely on section 14(1) in this case. The Commissioner will also consider her detailed arguments.
27. Section 14(1) is an exclusion that provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.

28. The Commissioner's view is that he should consider whether the requests were vexatious at the time they were received by the public authority. If the requests were not vexatious when they were received, the public authority would be obliged to answer them under section 1(1)(a).
29. When assessing whether requests are vexatious the Commissioner adopts the view of the Information Tribunal (the 'Tribunal') in *Ahilathirunayagam v Information Commissioner's Office* (EA/2006/0070). The Tribunal explained that 'vexatious' must be given its ordinary meaning ie would be likely to cause distress or irritation. Whether the request has this effect is to be judged on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (paragraph 27) ('*Gowers*'). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles.
30. The Commissioner also endorses the Tribunal's consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) (paragraph 21) ('*Welsh*') where it stated:

'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that

FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'

31. The Commissioner has taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context. The public authority has argued that the request by itself should be regarded as vexatious and this can be consolidated through considering the background of the request.
32. The Commissioner has issued guidance as a tool to assist in the consideration of what constitutes a vexatious request³. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors:
 - (1) whether compliance would create a significant burden in terms of expense and distraction;
 - (2) whether the request has the effect of harassing the public authority or its staff;
 - (3) whether the request can fairly be characterised as obsessive.
 - (4) whether the request has any serious purpose or value; and
 - (5) whether the request is designed to cause disruption or annoyance.
33. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Welsh* at paragraph 26. In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.

³ This guidance is called 'When can a request be considered vexatious or requested?' and can be located at the following link:
http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

34. The public authority has told the Commissioner that it believes the first three factors apply in this case. The Commissioner has looked at these three factors and has also considered factor (4) in order to consider whether the request has a serious purpose and if so, whether that purpose is so great that it can outweigh all the other factors and render the request not vexatious.

Do requests 7-9 constitute a significant burden in terms of expense and distraction?

35. When considering this factor the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is:

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."

36. The Commissioner therefore expected the public authority to show that complying with requests 7-9 would cause a significant burden both in terms of costs **and** also diverting staff away from their core functions.

37. The Tribunal in the case of *Gowers* emphasised that previous requests received may be a relevant factor:

'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor' (paragraph 70 of its decision).

38. The public authority asked the Commissioner to take into account the following arguments about the requests' context, which the Commissioner considers to be relevant to the burden of these requests:

- The complainant's requests and the surrounding correspondence have impacted on a very wide number of departments at the Trust, including:

- (i) Chief executives office;
- (ii) Oncology;
- (iii) Nursing;
- (iv) Human resources;
- (v) Patient affairs;
- (vi) Patient advice and Liaison service (PALS);
- (vii) Communications; and
- (viii) Complaints.

- The correspondence has involved at least 25 individuals and the substantive requests have been estimated to have taken over 450 hours of staff time. Of those 450 hours, approximately 200 hours predated the requests dated 9 December 2010. It has also spent at least 40 hours alone dealing with her requests under the Act;
 - The public authority explained that it was clear to it from the continued correspondence it received that the complainant will not be satisfied with any result or recorded information that the Trust can provide. For example, in request 7, she told the Trust that 'I have asked quite a few questions and I have several hundred more to ask – which I will obviously be expecting answers for';
 - The public authority explained that the burden was not limited to written correspondence. It explained that she has also phoned medical staff and offices demanding both explanations and information;
 - The public authority also explained that it has taken the time of a considerable number of individuals to discuss and consider her enquiries. It explained that many telephone calls and interviews have been conducted with all staff at all levels – from secretaries to nurses to the Chief Executive. It is obvious that these enquiries have prevented the public authority from providing health care services;
 - The public authority has on numerous occasions created recorded information for the complainant, even though it was not required to do so under the Act in an effort to assuage her concerns;
 - The complainant has also forwarded her letters to various other organisations and the Trust has had the burden of ensuring that those organisations are also responded to; and
 - The complaints process was ongoing on 9 December 2009 and the complainant was conducting her own investigation regardless of it.
39. The complainant has explained to the Commissioner her belief that the Trust has acted reprehensibly, that all the questions should be answered to enable her to investigate this behaviour and that the questions were reasonable in these circumstances.
40. When considering the facts the Commissioner is satisfied that a great deal of the Trust's time has already been spent dealing with previous requests and with complainant's associated correspondence about the treatment of her late mother. He finds that all the requests are

connected either to this treatment, her allegations about it or her allegations about the treatment of her and/or her information requests.

41. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] (*'Coggins'*) about what constitutes *'a significant administrative burden'* and is satisfied that the requests in this case if dealt with without utilising section 14(1) would have contributed to a *'significant distraction from its core functions'* (paragraph 27 of its decision). Indeed, the Commissioner is satisfied that the sheer number of the multiple interlinking requests dispersed with serious allegations have placed a real burden on the public authority.
42. The Commissioner has noted that the public authority failed to deal with the first few requests appropriately and has considered whether the burden could be put down to reasonable frustration at its previous poor performance. However he is satisfied that requests 7-9 have caused such a burden in expense and distraction that they cannot be solely mitigated due to the public authority's previous poor performance.
43. The Commissioner considers that the unceasing potential for further requests, about an issue where the disagreement between the parties was not possible to resolve, supports the public authority in concluding that requests 7-9 constitute a significant burden in terms of both expense and distraction.
44. The Commissioner has also considered the Tribunal's approach in *Betts v The Information Commissioner* [EA/2007/0109], where it indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:

'...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'
45. The Commissioner has examined the pattern of the requests and has no doubt that this was what was happening in this case. The public authority explained that it believed it had provided all the recorded

information it held, it has also tried to answer questions where it holds no recorded information and yet it still received further requests and would carry on to do so. The Commissioner believes that the public authority has demonstrated that the complainant, when unhappy with any response received from the public authority (or where it does not accord with her view of the situation), will continue to correspond in an effort to sway the public authority to respond in a manner more to her liking. He concludes that the complainant does not understand her right is only to recorded information held and that she continues to make requests under the Act to try and force the public authority into answering her allegations about specific members of staff. The Commissioner is satisfied that it is reasonable for the public authority to consider that compliance would lead to further correspondence, thereby increasing burden to the public authority. Indeed, the complainant mentioned before the request was deemed vexatious that it should now expect hundreds of further questions, but that these should be enough to keep it busy.

46. Assessing all the circumstances of the case, the Commissioner is satisfied that the three requests dated 9 December 2009, taken in the context of the hours spent dealing with the previous correspondence about the treatment of her late mother and the resulting distraction from the public authority's core purposes, would impose a significant burden in terms of both expense and distraction. The Commissioner finds that this is a significant factor in favour of applying section 14(1) on the facts of this case.

Do requests 7-9 have the effect of harassing the public authority or its staff?

47. The complainant contends that there is no evidence of this request harassing the public authority or its staff, other than correctly holding it accountable for its actions. Instead she believes it was important that the information held was out in the open so that the public authority's actions were open to scrutiny.
48. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the requests and not the requester that must be considered. It is an objective test – so a reasonable person must be likely to regard the request as harassing or distressing. The Commissioner's guidance states the features that can make a request have the effect of harassing the public authority or its staff are:
- Volume and frequency of correspondence;
 - The use of hostile, abusive or offensive language;
 - An unreasonable fixation on individual members of staff; and

- The mingling of requests with accusations and complaints.
49. The Trust has argued that the effect of these requests should be carefully judged in light of both the complainant's previous behaviour and the subject matter of the requests.
50. The Commissioner accepts it was not the complainant's intention to cause unwarranted distress. However, just by analysing the requests dated 9 December 2009, it is clear that the language of the requests is hostile and that the requests are mingled with accusations. For example:
- (1) Requests 7(2) and 7(4) allege that information has been deliberately removed from the medical records, with no evidence to substantiate this allegation; and
 - (2) Request 7(9) alleges that other records are 'faked'.
51. It is also clear that the names of two individuals are always prefaced by the word 'incompetent'. The Commissioner concludes that the unwillingness to engage with the complaint process and the decision instead to repeat allegations in a manner where they are to her self reinforcing amounts to an unreasonable fixation on those individuals. The Commissioner also notes that every time there is a change in staff, the complainant presumes that those individuals have 'left in disgust'. The Commissioner is also content that the requests have considerable volume. Three new requests were received on 9 December 2009. This was when the time for complying with the request dated 12 November 2009 had not yet expired. This previous request had twenty two elements. It follows that the complainant's requests have all four features that are mentioned in the Commissioner's guidance.
52. The Commissioner considers that it is appropriate to illustrate how the requests harass both the public authority and its staff. While these comments post-date the request and therefore cannot be taken into account in reaching a decision on the application of section 14 (1) by the public authority at the time of the request, they show why this request in its context would harass the public authority and individual members of staff at the time of the request:
- 18 December 2009: *I would like an explanation for why [Individual J redacted] didn't summarily dismiss them – request that they be removed from their positions (.) when he received 'no documentation' on or after the 8th May CLINIC DATE.*

- 4 January 2010: *'Now you are attempting to interfere into my own investigation into the matter of my Mother's suspicious and untimely death under this evil pair.'*
 - 9 March 2010: *'Without meaning to insult you, I am advising you to take a change of career'.*
53. The Commissioner is satisfied that her previous correspondence was equally frequently disparaging of the Trust as a whole and was also personal. The Commissioner has received contemporary evidence that at least three individuals were personally affected by the complainant's comments. The Commissioner has received examples where individuals discuss the distress that they have experienced. The Commissioner is satisfied that the distress is real and that the complainant's correspondence was responsible for it. The Commissioner has also received the correspondence about how the public authority tried to deal with the distress and notes that it was necessary for it to take special measures.
54. The Trust also explained that continuous correspondence by the complainant about the care of her late mother meant that the relevant department was being harassed. The complainant maintains consistent pressure on the public authority to encourage it to change its view about her complaints. The Commissioner considers that there must be a point where further correspondence has the effect of harassing the public authority and is satisfied that this point had been reached by 9 December 2009.
55. The Commissioner considers that this case was factually analogous to the First Tier Tribunal (Information Rights)⁴ decision of *Tony Wise v The Information Commissioner* [EA/2009/0080] in respect of this point. In this case the Tribunal found that the complainant repeatedly called the Council *'corrupt, dishonest, unethical liars'* and that the requests *'cannot be divorced from the correspondence upon the same topic being sent to those at the Council tasked with answering the information requests'*. The Commissioner is satisfied that the Trust was under the same pressure sort of unmitigated pressure in this case.
56. In his view the Commissioner considers that the Tribunal decision in *Coggins* also provides support to his consideration of the case. The Information Tribunal considered whether the requests had the effect of harassing the public authority and found that they did because:

⁴ The First Tier Tribunal (Information Rights) is the body that has replaced the Information Tribunal.

"...what we do find is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient as hostile, provocative and often personal...and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them....we find that taken in their context, the requests are likely to have been very upsetting to the CCU's staff and that they...are likely to have felt deliberately targeted and victimised...." (paras 53 & 54).

57. The Commissioner is satisfied that the requests in their context did have the effect of harassing the public authority. He therefore concludes that this factor strongly supports the application of section and deserves real weight on the facts of this case.

Can requests 7 to 9 be fairly characterised as obsessive?

58. The complainant contends that her requests for information are not obsessive. She has identified what she perceives as being wrong and potentially criminal behaviour and believes that the Trust has not investigated her concerns thoroughly. She therefore is required to investigate the issues and cannot do so without having access to all of the appropriate information.
59. The public authority indicated that it viewed the request as obsessive. It presented the following arguments in support of this view:
1. The requests it has received are very extensive and any response sent to the complainant results in more questions and further enquiries;
 2. The complainant has made a number of allegations against individual members of staff that have been investigated and found to be unfounded. This hasn't stopped the complainant continuing to make the same allegations;
 3. The complainant refuses to be restricted to a single line of communication. Instead, she contacts individual staff members, visits the Hospital and disrupts their day to day duties;
 4. The Trust's head of complaints has determined that there are no mechanisms he believes would satisfy the complainant. It explained that it was required to place notices within its wards to protect its staff from being harassed;

5. It argued that the complainant had only used the Act when she had exhausted its complaints process in order to try and reopen the complaint. The Commissioner has not been convinced by this particular argument. The complaints process was exhausted on 26 February 2010 and the request predates this. The Commissioner considers that the enquiries were made when the complaint process was in action and the complainant was conducting her own investigation at the same time and would have done irrespective of the outcome of her complaint; and
6. Both the General Medical Council (GMC) and Nursing and Midwifery Council (NMC) have subsequently investigated members of staff after complaints from the complainant. They have exonerated the staff involved and this shows that the complainant's campaign has little real merit and was an obsession.
60. The Commissioner has carefully considered where the balance lies in relation to this factor and has to consider the situation as at 9 December 2009. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts.
61. The Commissioner accepts that the majority of the Trust's arguments concern matters that happened after the request and cannot be used directly as evidence to show that the requests dated 9 December 2009 were obsessive. However, the Commissioner considers that the complainant's general approach has indeed been obsessive and at the time of the requests it was clear that these requests did form part of an obsessive campaign against the Trust and its employees. The Commissioner is satisfied that the subsequent events provide additional evidence to show the nature of this obsession.
62. The Commissioner appreciates that it is important for public authorities to demonstrate accountability and transparency where possible. However, against this he also considers that it is important for public authorities to be able to use their resources effectively to promote the public good. Protection should be provided when a sequence of requests, where the issues have already been dealt with, becomes a continuous burden on the public authority's resources.
63. Having considered the arguments provided by the public authority in this case, the Commissioner concludes that the requests have an obsessive nature. He considers that there was no possibility of satisfying the complainant in this case. As such he concludes that a reasonable public authority would find these requests obsessive, so also finds in the Trust's favour on this factor.

Did the request have value and/or a serious purpose?

64. While the public authority has not argued that the requests lack a serious value or purpose, the Commissioner has considered this factor, as in some cases the serious value and purpose of a request can be so great that it is possible for the purpose to make an otherwise vexatious request valid. This is in line with the Tribunal's comments in *Coggins* (at paragraph 20) where it:

"could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action."

65. The complainant argued her requests have value and a serious purpose since the information will enable her to scrutinise the public authority's conduct in respect to the treatment of her late mother. It is clear that she believes there are serious questions about the nature of the events that led to her mother's death and the documents are necessary to consider whether the Trust has acted with propriety.
66. The Commissioner notes that the Trust clearly are of the belief that the value and purpose in the complainant's requests are mitigated by the nature of the campaign, the failure to pursue the case through the correct channels and the quantity of information that has already been made available to her. The public authority explained that it had already provided the complainant with the clinical information that it held about her deceased mother.
67. The Commissioner is satisfied that there was a serious purpose to these particular requests for information at the time of the request. The Commissioner recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. This should be so in relation to clinical decisions that it takes, especially where fatalities occur. He has therefore found that this factor favours the complainant.
68. The Commissioner has considered whether the serious purpose can be considered to have sufficient weight to overcome the other factors. In

this instance he has concluded that sufficient weight cannot be placed on the serious purpose identified, to make it inappropriate to deem the request vexatious in this case. This is in view of the overall context of these particular requests and his conclusions above about other aspects of this case.

Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?

69. The Commissioner recognises that there is a fine balancing act between protecting a public authority from meritless applications and the promotion of the transparency in the workings of an authority.
70. He has also had regard to the Tribunal's decision in *Welsh*, where the Tribunal commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor to be made out from his guidance for the requests to be correctly characterised as vexatious. The Commissioner is satisfied that a reasonable public authority can find the requests vexatious when at least one and preferably two factors in his guidance can be evidenced.
71. The Commissioner has considered all the evidence presented, including the history and context of the requests. The Commissioner is satisfied that the requests had a serious purpose. However, he has found that they were harassing, obsessive and burdensome in terms of both expense and distraction. The Commissioner's view is that the serious purpose was of insufficient weight to outweigh the three factors outlined above. As this is so, the Commissioner is satisfied that a reasonable public authority was entitled to find requests 7 to 9 vexatious.
72. He has come to this decision based on the circumstances as they existed on 9 December 2009.
73. He is therefore required to make a decision about the remaining 17 requests for information received by the public authority after 9 December 2009 and whether a reasonable public authority could find them vexatious at the time when they were submitted.
74. The Commissioner is satisfied that the pattern of these subsequent requests and their nature exhibits obsessive behaviour and that they are harassing. They also individually and collectively constitute a significant burden in terms of expense and distraction. For example, request 14 contains both intemperate language and personal attacks on a member of staff whom the complainant had no previous contact with.

75. The Commissioner is of the considered view that these requests become more vexatious as time goes on. This is because the evidence of harassment and obsession becomes greater. He has considered whether the reaction of the complainant was reasonable, given that the earlier requests were not answered to her satisfaction and has decided that even taking this into account that the requests are vexatious.
76. It follows that the Commissioner is satisfied that a reasonable public authority could find each of the 17 remaining requests vexatious.
77. Therefore, the Commissioner also upholds the application of section 14(1) to each of the remaining 17 requests.

3. *Sections 40(5)(b)(i) and 40(2)*

78. The public authority has applied section 40(2) to two categories of information. The Commissioner has decided to outline them in this part of the Notice for the sake of clarity:

1. The first category concerns two requests for information about whether disciplinary action was taken against a named individual member of staff:

- (a) Request 5(18) – “Will any action be taken against the [rank redacted] [Individual F redacted] who lied in the Medical records and stated that the non-resuscitation was ‘the wishes of the patient’ despite being told that this was incorrect and that [Individual A redacted] had decided that [Individual C redacted] would not be resuscitated? (Which was recorded)”; and
- (b) Request 5(19)(i) – “What action will be taken against [Individual F redacted]”?

2. The second category concerns two requests for information about a named individual’s leave, including her maternity leave:

- (i) Request 5(2) – “What dates was [Individual redacted I] absent – prior to going on Maternity Leave”; and
- (ii) Request 5(3) – “What month was the baby born? How soon (date) did [Individual I redacted] return to work”.

79. It is important to note at this stage that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the

public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) confirmed, at paragraph 52, that, "*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions.*"

80. The Commissioner will now deal with each set of information in turn:

Category one - requests 5(18) and 5(19)(i)

81. Section 1(1)(a) of the Act normally imposes a duty on public authorities to inform the applicant whether it holds the requested information. This duty is known as the duty to confirm or deny.

82. However, it is possible to be excluded from this duty if the confirmation or denial would itself contravene any of the data protection principles (Section 40(5)(b)(i) of the Act).

Section 40(5)(b)(i)

83. The Commissioner notes that the public authority did provide a response to the complainant as to whether information was held.

84. The Commissioner has considered his dual role as regulator of the Act and the DPA and has used his discretion to allow the public authority to raise arguments that section 40(5)(b)(i) could apply to the information in the first set. He will look at this issue first. He will consider if informing the public whether any complaints had been made regarding [Named Individual F] would contravene any of the data protection principles.

85. In order for section 40(5)(b)(i) to be correctly applied the public authority must establish the following:

- (1) That confirming whether or not information is held by the public authority would reveal the personal data of a data subject as defined by section 1(1) of the DPA; and
- (2) That to confirm whether or not information is held would contravene one of the data protection principles.

(1) *Would the confirmation or denial that the information requested is held in itself constitute 'personal data'?*

86. Personal data is defined in section 1 of DPA as data '*which relate to a living individual who can be identified—*
- (a) *from those data, or*
(b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'*
87. At the time the request was made, the Commissioner is satisfied that the individuals named in the request were alive.
88. The Commissioner is of the view that the existence of any complaint would plainly be an expression of an opinion regarding [Named Individual F] and therefore would constitute their personal data. Confirming the complaint's existence or otherwise would in itself reveal significant information about the complained about party.
- (2) *Would confirming whether the information is held breach any of the data protection principles?*
89. The data protection principles are a statutory code for the processing of personal data. They are set out in Part I of Schedule 1 to the Data Protection Act 1998. The principle that is most relevant is the first data protection principle. It requires, amongst other things, that personal data is fairly processed. In order to determine whether it would be fair to process the personal data the Commissioner considered the following factors:
- The way that the public authority considers complaints and what the data subjects' expectations would be in the event of it receiving a complaint;
 - The likely expectations of the data subject regarding the disclosure of the information;
 - The effect disclosure could have on the data subjects, for example, could the disclosure cause unnecessary or unjustified distress or damage to them; and
 - The type of the information that may be held.
90. In coming to this decision, the Commissioner has reviewed the public authority's complaints handling functions. It has the power to investigate complaints that are made about it and come to a considered verdict. The complainant may then take the complaint further for example to the General Medical Council (GMC) or the Health

Service Ombudsman. The important thing regarding the expectation of all employees is that complaints will be dealt with confidentially and handled appropriately by the Trust. Information about them would only be published when a complaint is upheld and disclosure is appropriate.

91. Further, allegations regarding their professional performance may also be unfounded and/or malicious. Were such details publicly available, this may harm the member of staff, even if it were subsequently found that there was no case to answer.
92. In considering fairness, the Commissioner takes the view that a prime consideration must be the consequences of processing the data for the interests of the data subject.
93. At the date of request, the Commissioner is satisfied that the named individual in question would have had no expectation that details of complaints, if held, would be made public in this case. In view of this, he views it as being unfair for the complainant to be informed whether any complaints had been made. The public authority has noted that the potential disclosure of information about complaints would also undermine the individual's employment rights and may lead to prejudice of a future employment tribunal case.
94. The Commissioner is satisfied that disclosure of this type of information would breach the DPA in that it would be contrary to the first data protection principle. It would be unfair to confirm whether complaints had been received about [individual F redacted], except if a complaint had been sufficiently serious to mean that it had gone before a public body that issues judgments. There was a reasonable expectation that the existence and details of complaints might be provided to the relevant disciplinary bodies, but there is nothing to suggest that those individuals would expect that their personal data would be communicated to the general public without their consent. Such a communication would be likely to cause unnecessary distress to the individual. The type of information requested is that which ordinarily remains confidential between an employee and his employer.
95. As the disclosure of whether it had received complaints and/or the actions taken about a specified individual would have been unfair to that individual, the Commissioner has found that such a disclosure would contravene the first data protection principle. He therefore finds that he supports the public authority's application of section 40(5)(b)(i) and finds that the public authority is not required to confirm or deny to the public whether any of the requested information was held.

96. The Commissioner's view is that the public authority should have applied section 40(5)(b)(i) from the outset in this case.
97. As the public authority is not required by the legislation to confirm or deny whether information is held on the facts of this case, it follows that it is not required to provide, if held, any further information to the complainant under the Act for this set of information.

Category two – requests 5(2) and 5(3)

98. The Commissioner considers that it is arguable that the same approach as category one should also be taken for this information. However, the public authority has already confirmed to the public that [Individual I redacted] went on maternity leave. It follows that it would be unsustainable for the public authority to argue that it doesn't hold the relevant dates for at least any annual leave preceding that leave and when [Individual I redacted] came back. The public authority has argued that the relevant information should not be provided because it is exempt by virtue of section 40(2) of the Act and the Commissioner will consider the applicability of this exemption below.

Section 40(2)

99. In analysing the application of section 40(2), the Commissioner considered:
 - a) whether the information in question was personal data; and*
 - b) whether disclosure of the personal data under the Act would contravene the first data protection principle.*

Is the information personal data?

100. As noted above personal data has a statutory definition found in section 1 of the DPA. The Commissioner is satisfied that the date of someone's maternity leave, other annual leave and the date their baby was born is personal data. This is because it is information that is linked to an identifiable living individual and provides biographical information about them.
101. Sensitive personal data is defined in section 2 of the DPA. Where information is sensitive personal data further protection is provided against disclosure. The Commissioner is satisfied that information about maternity leave also amounts to the sensitive personal data of [Individual I redacted]. This is because it falls within the category 'physical or mental health or condition' (section 2(e) of the DPA). The

information clearly relates to details about the physical condition of [Individual I redacted].

102. The Commissioner notes that this information comprises of:

1. Information about when the baby was born and when [Individual I redacted] returned from maternity leave; and
2. Information about when [Individual I redacted] was at work before her maternity leave.

Would disclosure contravene the first data protection principle?

103. As noted above, the first data protection principle requires that the disclosure of the information to the public should be, amongst other things, fair to the data subject.

104. When deciding whether the disclosure of the information is fair, the important factors that require consideration are:

- What are the reasonable expectations of the individual in relation to the handling of their personal data?

Including:

- What was the person told about what would happen to their personal data?; and
 - How the fact that the individuals are paid from the public purse influences those expectations.
- Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual; and
 - Legitimate interests of the public in knowing the withheld information and understanding who was responsible for medical treatment at a set time.

105. In relation to the information about when the baby was born and when the individual returned from her maternity leave, the Commissioner is satisfied that the reasonable expectation of any employee is that information about their private family life is kept in confidence by an employer. Indeed, he notes that even the complainant accepts that this information would not be provided when asking different questions on 24 December 2009. The Commissioner accepts that [Individual I redacted] was paid from the public purse, but does not feel this has any impact on her expectations in relation to private information. The Commissioner accepts that maternity information is inherently private

- and in fact amounts to sensitive personal data. He is satisfied that the disclosure of this information has the potential to cause unnecessary and unjustified damage to [Individual I redacted] and that in his view there are no legitimate interests at all in the disclosure of the information about when the baby was born or when maternity leave was concluded (for the length of maternity leave concerns her private family life). In the Commissioner's view the disclosure of this information would be unfair and contravene the first data protection principle. As this is so, the public authority was entitled to withhold it under section 40(2).
106. In relation to information about when [Individual I redacted] was at work prior to commencing maternity leave, the public authority explained that the reasonable expectations of the data subject must be assessed in the context of the request. It explained that the complainant has been told that [Individual I redacted] played no role in the care of her late mother and that the data subject would not expect that this information would be provided to enable the complainant to further harass her when she had no role at all in respect to the substantive complaint.
107. The Commissioner accepts that public sector employees would generally expect information to be available to service users about when they were working. This is because those employees would be available on those certain days and would have contact with the public. However, he considers that this expectation does not extend retrospectively to information about when and why people are absent.
108. The Commissioner is satisfied that the severity of the interactions with the complainant and the fact that the release of this information would be highly likely to lead to further intemperate correspondence with personal allegations being made, needs to be taken into account in the context of this case. In the Commissioner's view, this renders the individual's expectation that the Trust as their employer would protect them from such events as being convincing and reasonable in this particular case.
109. The Trust has argued that it believed it was highly likely that disclosing this information would lead to [Individual I redacted] being harassed. It explained that its value was mitigated in the knowledge that [Individual I redacted] took no role in the care of the complainant's late mother. It explained that the consequence of disclosure was highly likely to cause unnecessary and unjustified damage or distress to the data subject, that in its view there was no value to providing this information and that it may be used to contact and harass the data subject. The Commissioner is satisfied from his careful consideration of

the history and background to these requests that the Trust was correct that there was a real risk of distress and damage being caused by this disclosure. He therefore concludes that it would be unfair to disclose the requested information in this case

110. The Commissioner therefore considers that section 40(2) has also been applied appropriately to this information.

Section 21(1)

111. Section 21 states that information is exempt from disclosure if it is reasonably accessible to the applicant by other means. The public authority claimed that it did not need to answer request one again because all the recorded information that it held was accessible to the complainant by other means, namely it was contained within the medical records that she had received.

112. As noted above, the public authority is relying on section 21(1) in respect to recorded information contained in the medical records provided to the complainant for request one.

113. The Commissioner is satisfied that the complainant was in possession of the medical records that had been provided to her before making the request. This is because she cites their contents when making the requests.

114. It follows that in relation to the information contained in the medical records that she had been provided, it was appropriate for the public authority to apply section 21(1). This is because this information was accessible to the complainant through other means.

Section 1

115. As noted above, the Commissioner is of the view that the public authority was required to deal with the first six requests in this case without recourse to the vexatious provision. The public authority then answered those requests in accordance with the Commissioner's instructions.

116. Section 1 provides that any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it holds information of the description specified in the request and (b) if that is the case to have that information communicated to him.

117. It follows that it is necessary for information to be held in recorded form at the date of the request for it to be subject to the Act.
118. For a number of the complainant's 'questions' which were also requests for information under the Act, the Trust confirmed that it did not hold relevant recorded information and therefore was not required to answer the requests.
119. The complainant has argued that the Trust must hold relevant recorded information in respect to all the questions that she has asked and that the Trust had inappropriately stated that it did not hold relevant recorded information.
120. The Commissioner is therefore required to consider whether the public authority did hold relevant recorded information in respect to those requests where it said it did not (and which were not covered by any of the exemptions considered above).
121. For the sake of clarity, the requests that need to be considered are:
- Request 1(1) and 1(2);
 - Request 2;
 - Request 3;
 - Request 5(7), 5(8), 5(9), 5(10), 5(11), 5(13) - 5(16), 5(17)(i) and 5(21); and
 - Request 6(1) and 6(2).
122. It is important to note the standard of proof the Commissioner uses to determine whether relevant recorded information is held. In *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072] ('Bromley'), the Tribunal confirmed that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
123. The Commissioner has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in *Bromley*. It explained that to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It is also necessary to consider, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

124. When the Commissioner first received this complaint, the responses that had been issued by the Trust were inadequate and in many cases it was unclear whether the Trust held recorded information.
125. It was therefore necessary for the Commissioner to approach the Trust again and explain exactly what is expected when dealing with information requests. During the course of his investigation, he ensured that the public authority understood what had been requested and its obligations to look at those requests and see whether it held relevant recorded information in respect of them.
126. The Commissioner is satisfied that the public authority understands what was being asked for in this case and has looked for the recorded information that answers the requests.
127. The Commissioner is therefore satisfied that the public authority's second review of the requests under the Commissioner's guidance was more comprehensive. It is noted, that the Commissioner is only considering the requests where after that second review the Trust maintains its view that it holds no relevant recorded information.
128. The Commissioner has asked the Trust to detail the nature of the searches that it has undertaken to find out whether it holds relevant recorded information for these outstanding requests.
129. The Trust has explained that the following individuals had conducted detailed searches for the information requested:
 1. Complaints Officers;
 2. The Heads of Complaints;
 3. Medical Records Manager; and
 4. The Trust's present FOIA manager and his predecessor.
130. It explained that these particular individuals were employed in positions where checking the public authority's various filing systems was a routine part of their job and that it had checked all of its records in its Complaints department, its medical records department and anywhere else it felt appropriate information may be held. It provided the Commissioner with the complaints file which contained records of all the searches that were undertaken, how they were undertaken and how it made telephone calls and conducted interviews with relevant staff with the purpose of trying to locate further relevant recorded information.
131. The Commissioner is content that, having seen the extent of the searches that have been conducted in the circumstances of this case,

they were reasonable and proportionate. The obligation is only to find relevant recorded information that is held.

132. It also explained that a large number of requests for information are preceded by allegations that are in its view wrong. The complainant is pursuing individual members of staff and it was reasonable that it would not hold recorded information that accorded with her allegations. For example, element (21) of request 5 demands an apology for events that the Trust has investigated and found did not happen. It was highly unlikely to hold recorded information in relation to such events.
133. It also was clear that the complainant failed to understand that the Act only applied to recorded information and demanded answers to questions that were unlikely to be held in recorded form. Indeed, confirmation that information wasn't held led to further requests for the same thing explaining that she wanted her questions to be answered.
134. The complainant has presented arguments that she believes recorded information must be held in respect to these outstanding requests. She explained to the Commissioner that 'there can be absolutely no compromise or informal resolution with the Trust on this matter' and that she 'simply requires all questions I have ever asked – answered'. She expressed the view that further recorded information 'must' be held, but offered the Commissioner no evidence about why this information would be held, despite the Commissioner explaining to her that the Act only applies to relevant recorded information.
135. It is also noted that the Trust has furnished the complainant with the medical records of her mother. The 'questions' were made in light of the knowledge that the medical records did not contain the information that was sought. The medical record is where the information is stored as a matter of general practice in respect to an individual's medical treatment. This is for good business reasons for it will allow the information to be accessed by those responsible for the care of the patient. In the Commissioner's view this provides further evidence about why no relevant recorded information is held in respect to these outstanding requests.
136. The Commissioner has carefully considered the arguments of both sides. He has considered all the interactions between the complainant and the public authority. He has also considered all the correspondence within the public authority about how these requests have been dealt with. He has come to the view that on the balance of probabilities there is no further relevant recorded information held by the public authority

for these requests and therefore upholds the public authority's position in respect to section 1(1)(a).

Procedural Requirements

137. As noted above, the public authority has made a number of mistakes in its procedural handling of the requests for information in these cases. It is therefore necessary for the Commissioner record them.

Section 1(1)(a)

138. As stated, section 1(1)(a) requires that a public authority confirms or denies that it is holding relevant recorded information for each request.

139. In this case the public authority failed to confirm or deny whether it held relevant recorded information in respect to a number of the requests that it received prior to the Commissioner's involvement. Its failure to do this was a breach of section 1(1)(a).

140. The Commissioner is satisfied that the appropriate responses have been provided as a result of this Notice, so requires no remedial steps in respect to this breach.

Section 1(1)(b)

141. Section 1(1)(b) requires that a public authority communicates relevant recorded information that it holds (unless it applies exemptions correctly to it).

142. The information that was not communicated when the request was dealt with the first time and was subsequently disclosed during the Commissioner's investigation should have been provided to the complainant in this case. The public authority's failure to do so, prior to the Commissioner's involvement, constitutes a breach of section 1(1)(b).

143. The Commissioner is satisfied that the information the complainant was entitled to under the Act has now been provided and so requires no remedial steps to be taken in this case.

Section 10(1)

144. Section 10(1) requires that the public authority complies with its obligations under sections 1(1)(a) and 1(1)(b) within twenty working days (subject to a limited number of exemptions which are not appropriate to detail here).

145. The public authority failed to confirm or deny whether it held some recorded information or provide information where it wasn't excluded within twenty working days. It has therefore breached section 10(1).

Section 17(1)

146. Section 17(1) requires that where a public authority refuses to provide information and it is relying on an exemption, it should issue a refusal notice within twenty working days. The public authority failed to do this for request five and it has therefore breached section 17(1).

Section 17(1)(b)

147. Section 17(1)(b) requires that a refusal notice specifies the exemption that is being relied upon. In this case, the public authority failed to state the subsections that it was applying when it applied exemptions. In the Commissioner's view, this amounts to a breach of section 17(1)(b).

Section 17(5)

148. Section 17(5) requires that a public authority (subject to limited exceptions that are not applicable here) issues a refusal notice specifying that it relies on section 14(1) within twenty working days. In this case, the public authority did not issue such a Notice for the majority of the requests it considered to be vexatious. The Commissioner therefore records a breach of section 17(5).

Section 17(7)

149. Section 17(7) requires that the Trust either provides its internal review procedure or explains that it has no such procedure when refusing a request. The public authority did not do so in this case and the Commissioner therefore finds a breach of section 17(7).

Section 17(6)

150. The Commissioner has noted that the public authority simply stopped corresponding with the complainant and told her it would not respond unless new issues were raised.
151. The breaches of section 17(5) noted above could have been avoided by applying section 17(6). This provision is designed so that where a series of requests are vexatious, the public authority is not required to continue issuing new refusal notices for every request it receives on

- the same subject. Instead it can issue one section 17(6) notice and comply with the Act in respect to future requests on those matters.
152. The Commissioner has therefore considered whether the actions of the public authority meant that it in fact didn't need to respond to the later requests where they were vexatious (and whether some of the breaches of section 17(5) did not need to be recorded).
153. There are three requirements for section 17(6) to apply:
- (i) The public authority is relying on section 14(1);
 - (ii) It has given the applicant a notice stating this; and
 - (iii) It would in all circumstances be unreasonable to serve a notice under subsection 17(5) to the current request.
154. The first two elements are clear in this case. The public authority has issued a number of notices about it applying section 14(1) to previous requests.
155. When considering whether in all circumstances it would be unreasonable to serve a notice under section 17(5) the Commissioner has carefully considered the following:
- 1. All the information requests relate to the same complaint – namely the treatment of her late mother;
 - 2. That this has expanded to include challenges to the investigation, its complaints procedure and its record keeping;
 - 3. This was a campaign, but she has chosen only to use some of the available method of challenges;
 - 4. When these were exhausted she persisted and was provocative;
 - 5. She did not wait for a response before making the next request; and
 - 6. She was never going to be satisfied with the response.
156. However, against these points the Commissioner has noted that the original requests were poorly handled and the complainant was not given sufficient notice that the public authority was thinking of applying section 17(6).

157. The Commissioner has considered that in the circumstances of the case it was reasonable for the public authority to be required to issue a separate notice for each request, until it placed the complainant on notice. This is because it would ensure that the complainant was aware that it had received the request and considered them individually.
158. However, should the public authority put the complainant on notice of its reliance on section 17(6) in the future, then the Commissioner believes that the weight of the six elements in paragraph 155 would be likely render the issuing of a separate notice unreasonable where the future requests related to the same matter (namely the treatment of her mother, its record keeping in respect to that, its handling of her complaints and/or its treatment of her). He advises the public authority to carefully consider its position in relation to future requests.

The Decision

159. 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:
- It applied section 40(1) appropriately in respect of the information that was the complainant's own personal data;
 - It applied section 14(1) appropriately for each of the requests 7 to 26;
 - It was not required to answer requests 5(18) and 5(19)(i) because the exclusion found in section 40(5)(b)(i) applied;
 - It applied section 40(2) appropriately to requests 5(2) and 5(3);
 - It applied section 21(1) appropriately to the medical records that it had provided; and
 - It satisfied the Commissioner that on the balance of probabilities it did not hold further relevant recorded information for the remaining requests.
160. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It breached section 1(1)(a) in failing to confirm or deny whether it held relevant recorded information to the complainant, until the Commissioner's investigation;
- It breached section 1(1)(b) in failing to provide some relevant recorded information to the complainant that she was entitled to under the Act, until the Commissioner's investigation;
- It breached section 10(1) because it failed to comply with section 1(1) within twenty working days;
- It breached section 17(1) because it failed to issue a compliant refusal notice in twenty working days;
- It breached section 17(1)(b) because it failed to specify an exemption that it would rely on down to the relevant subsection; and
- It breached section 17(5) because it failed to issue refusal notices which explained that it believed that section 14(1) applied to a number of the requests that it later applied it to.

Steps Required

161. The Commissioner requires no steps to be taken.

Right of Appeal

162. 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.

Website: www.informationtribunal.gov.uk

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.

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 22nd day of March 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution**

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

Annex 1: An appraisal of the requests and correspondence

Request 1

1. On 26 August 2009 the complainant made the following request for information [The capitalisation has been kept the same, but the Commissioner has redacted the names of all individuals as this Decision Notice will be published]:

'...I wish it to go on record that I am making a Formal Complaint about the Actions of both [Individual A redacted] and [Individual B redacted] [role redacted].

Both of these Incompetent Doctors are apparently still active at both hospitals I understand. I would like an explanation about why this is when they are currently under investigation and their actions have led to the Decline and Death of My Mother – [Name redacted].

I would also like to know when [Individual A redacted] or [Individual B redacted] contacted [Individual C redacted] to notify him that My Mother has developed SPINAL CORD COMPRESSION (A result of their incompetence) and that they had had her transferred to Charing Cross Hospital. THIS DATE IS VERY IMPORTANT. [Individual C redacted]'s co-operation in revealing this Date would be most appreciated since neither My Mother or Myself have ever had an explanation from him as to why the condition which My Mother developed (and led to her death) was not picked up whilst she was under his Team there at ST MARYS HOSPITAL.'

Request 2

2. On the 29 August 2009 the complainant made the following request for information to [Individual D redacted]:

'I would very much appreciate it if you would tell me when you became aware of My Mother's situation there in Oncology. And also, how you became aware. Who gave you this information, for instance? And on What date?'

Request 3

3. Also on 29 August 2009 the complainant requested the following information from another individual:

'I am going through her Medical notes right now and they are quite interesting. They are full of information – some HIGHLY IMAGINATIVE and SOME FACTUAL. However, of [Individual E redacted]'s input, there is nothing. Please explain to me why?

...

Would you please explain to me – Why [Individual E redacted]'s intervention into My Mother's care is NOT mentioned in the Medical Records. I want to know how ACTIVE a part he played in that team. And was he aware of [Individual A redacted] and [Individual B redacted]'s actions or the instructions they had given [Individual F redacted]. Was [Individual A redacted] in Charge throughout. I asked [Individual F redacted] and [Individual G redacted] (A Complete Stranger) about the Team Members. They couldn't give me a straight answer. I would like to know now. It seems appropriate now My Mother is Gone. It appears that these Medical Records do not list all Team Members and so, I would like an explanation as to Why this is.'

Request 4

4. On 7 September 2009 the complainant wrote to a different individual and requested the following:

'...

I revisited 6th South on 1st September 2009, in order to obtain some information which is clearly visible on a board in the corridor to any and everybody. I was harassed by [Individual H redacted], who called security for me.

...

I would like an explanation as to why he would attempt to create an 'incident' in this way. Could you kindly inform me what instructions, if any, he has been given on this matter. What instructions has he been given regarding me?

...

I have noticed that it is becoming increasingly difficult for me to obtain the information that I require to get justice for my Mother who was treated so abominably by Oncology [Individual A redacted] and [Individual B redacted] in Oncology there. And so I would like to know if instructions have been given not to assist me.'

5. On 8 October 2009 the complainant wrote to the public authority to chase up a response to the above four requests.
6. On 9 October 2009 the public authority acknowledged the response. It explained that the relevant individuals would respond to the letters by the end of that week. It explained that should the response be unsatisfactory then she should make new requests for recorded information that would be considered under the Act.

Request 5

7. On 12 November 2009 the complainant made her first request for information while specifying that she relied on the Act.

[1] When did [Individual I redacted] go to Maternity leave?

[2] What dates was she absent – prior to going on Maternity Leave.

[3] What month was the baby born? How soon (date) did [Individual I redacted] return to work.

[4] How long have [Individual A redacted] and [Individual B redacted] worked in Oncology in both St Mary's Hospital and Charing Cross Hospital – and have complaints been made against Oncology in the past? If so, who and when?

[5] How long had [Individual A redacted] and [Individual B redacted] worked with [Individual J redacted]?

[6] Where was [Individual A redacted] on 17th April [2009] when [Individual C redacted] was to have seen her clinic?

[7] How long have [Individual A redacted] and [Individual B redacted] been colleagues with [Individual K redacted] and [Individual L] redacted?

[8] When did [Individual K redacted] and [Individual L redacted] contact [Individual M redacted] [role redacted] and notify her that [Individual C redacted] was at Charing Cross Hospital?

[9] [Individual M redacted] saw [Individual C redacted] on 22 May 2009. When was [Individual M redacted] informed about [Individual C redacted]'s transfer? And did she keep [role redacted] [Individual K redacted] and [Individual L redacted] informed about [Individual C redacted]'s situation there at Charing Cross?

[10] If so, what information was sent to St Mary's and to whom?

[11] Who sent [Individual C redacted]'s notes to Charing Cross Hospital on 27 May 2009?

[12] Set of statements – not a request for information.

[13] Who was [Individual A redacted] in communication with at St Mary's Hospital on 27 May 2009?

[14] Please get me records/phone/etc for [Individual J redacted], [Individual A redacted] and [Individual B redacted]. A communication was made to someone in [Individual J redacted]'s team or by someone in [Individual J redacted]'s team. [Individual A redacted] placed that DNR (Do Not Resuscitate) Order on [Individual C redacted] – after I had phoned St Mary's Hospital and information [Individual J redacted]'s secretary that [Individual A] had dumped [Individual C redacted] at Charing Cross. [Individual C redacted] was no longer hidden. [Individual J redacted] knew!

[15] Did [Individual K redacted] notify either [Individual A redacted] or [Individual B redacted] that I had contacted [Individual J redacted]'s secretary? Did [Individual L redacted]? Or staff at Charing Cross?

[16] Why did [Individual A redacted] not inform the [Family redacted] that there was now a DO NOT RESUSCITATE ORDER placed in writing in [Individual C redacted]'s Medical records?

[17](i) Why was [Individual C redacted] not told of this occurrence?

(ii) Why was [the complainant] not told?

[18] Will any action be taken against the [rank redacted] [Individual F redacted] who lied in the Medical records and stated that the non-resuscitation was 'the wishes of the patient' despite being told that this was incorrect and that [Individual A redacted] had decided that [Individual C redacted] would not be resuscitated? (Which was recorded)

[19](i) What action will be taken against [Individual F redacted]?

(ii) And will I receive my apology in respect to the lies she told against me (a lie that I had threatened staff).

[20] When will I get my apology for that outrageous lie?

[21] Will [Individual A redacted] and [Individual B redacted] apologise for placing [Individual C redacted] under and [sic] unknown, absent and unreachable doctor [Individual I redacted] on Maternity Leave while they went off to alter [Individual C redacted]'s Medical records? And, slap the DNAaR Order on [Individual C redacted]?

[22] Will [Individual N] or [Individual O] take any action against these incompetent doctors? And their [rank redacted] [Individual F redacted]

8. On 15 December 2009 the public authority attempted to answer this request. It provided information for item 1. It applied section 40(2) for items 2 and 3. It tried to answer items 4 to 7. It said couldn't answer items 8-11. It explained the procedure around DNR orders for items 12, 16 and 17 and the cited the relevant guidance. It explained it also could not answer item 13. It explained that the patient held the Medical records that contained the answer to items 14 and 15 [section 21(1)]. For items 18, 19, 20 and 22 it explained that the Act only applied to information and that it could not say whether disciplinary action had taken place. Finally, for item 21 it explained that the Act cannot comment on this matter.

Request 6

9. On 4 December 2009 the complainant requested the following from [Individual I redacted]:

[1] Did you know that [Individual C redacted] was placed under your care on 17th May 2009 until her death on 5th July 2009?

[2] When did you become aware that you were listed as [Individual C redacted] as her doctor?

[3] Were you given instructions not to respond to my phone calls?

[4] Were you aware that I have been trying to contact you since May 2009? Any why have you chosen not to respond?

Request 7

10. On 9 December 2009 the complainant requested the following information:

[1] Why was [Individual P redacted] not able to contact [Individual A redacted] to arrange treatment for [Individual C redacted] after she had fainted the week of 12 April 2009?

[2] [Individual P redacted] at the Coulter Suite, St Mary's Hospital – tried to contact [Individual A redacted] for two days. Why were these notes removed from [Individual C redacted]'s medical records?

[3] What has happened to all the NURSES (sic) documentation of [Individual C redacted]'s condition – on/approx 15 April (2009) – when we went for [Individual C redacted]'s blood test? THE NURSES KNEW SHE HAD FAINTED AND FELL ON HER BACK.

[4] Why is [Individual K redacted]'s notes for 17th April CLINIC DATE we were supposed to have with [Individual A redacted], not found in the Medical records?

[5] Where are [Individual K redacted]'s notes? She attended the 17 April CLINIC DATE and was also told that [Individual C redacted] had hurt her back?

[6] Scans were taken on 17 and 21 April 2009. Why was [Individual J redacted] not told about this?

[7] [Individual C redacted] was hospitalised on 25 to 30 April 2009 after an ambulance was called to our home – because [Individual C redacted] was suffering with the severe pain in her BACK. Why was [Individual J redacted] not told [Individual C redacted] has been hospitalised? HE HAD NO KNOWLEDGE OF THIS EVENT OR OF ANY SCANS. I told him on 8th May CLINIC DATE – He asked the three members of his team 'why was I not told this!' Whose DUTY was it to tell [Individual J redacted] about [Individual C redacted]'s hospitalisation?

[8] A Multi-Disciplinary Team Meeting is documented as having taken place on 6 May 2009 when all SCANS appear to have been inspected on that data. Who attended this MDT meeting? I WANT NAMES.

[9] [Individual J redacted]'s team at the 8th May CLINIC DATE did NOT attend this MDT meeting. Nobody knew about any scans taken during [Individual C redacted]'s hospitalization. He began to arrange a whole new set of scans for her! Who faked that MDT Sheet for 6th MAY 2009?

[10] Who called up all this information on 17th May 2009? Was [Individual K redacted] in communication with incompetent [Individual A redacted] and [Individual B redacted]?

[11] When was the incompetent [Individual B redacted] made aware of [Individual C redacted]'s condition?

[12] Who made the recommendation that [Individual C redacted] should be transferred to Charing Cross Hospital?

[13] When did incompetent [Individual B redacted] notify equally incompetent [Individual A redacted] about [Individual C redacted]'s condition – that she was now PARALYSED from the chest down – WITH SPINAL CORD COMPRESSION?

[14] When did they [Individual A redacted and Individual B redacted] inform anyone at St Mary's – [Individual J redacted]'s team of this? How soon were they in communication with [Individual K redacted] to begin the chasing of the lost scans?

[15] Why did [Individual K redacted] not inform [Individual J redacted?] of [Individual C redacted]'s transfer or of her condition? THAT SHE WAS NOW PARALYSED FROM THE CHEST DOWN?

[16] Did incompetent [Individual A redacted] and [Individual B redacted] get permission from UNKNOWN, ABSENT AND UNREACHABLE [Individual I redacted] to use [Individual C redacted] IN THIS WAY? i.e. to DUMP [Individual C redacted] on?

[17] Was absent [Individual Aa redacted], [rank redacted] to [Individual I redacted] – the UNKNOWN, ABSENT AND UNREACHABLE doctor that [Individual A redacted] and [Individual B redacted] had dumped [Individual C redacted] under – also on leave during this time?

[18] Messages left on the answer phone to [rank redacted] [Individual Aa redacted] were not replied to. Since [Individual I redacted] was unreachable during this period – because she was on MATERNITY LEAVE (which we were NOT TOLD UNTIL 6th June 2009) who had access to [Individual Aa redacted]'s Office and was erasing those messages?

[19] When did [Individual I redacted] discover that [Individual C redacted] was her patient?

[20] Why will [Individual I redacted] not respond to phone calls on any of the 3 NUMBERS THAT I HAVE BEEN CALLING? They are as follows: - (three numbers with names attached redacted).

[21] Has [Individual I redacted] been given instruction by [rank redacted] [Individual D redacted] not to respond to my phone calls.

[22] Has [Individual I redacted] been given instruction by a Senior not to respond? Who has given [Individual I redacted] instructions/ if any not to respond to me?

[23] Was [Individual N redacted] herself – in contact with [Individual D redacted] after my MP acted on [Individual C redacted]'s behalf?

[24] Did [Individual E redacted] inform [rank redacted] that [Individual C redacted] had been DUMPED at Charing Cross and placed under Absent – [Individual I redacted]?

She explained 'I have asked quite a few questions and I have several hundred more to ask – which I will obviously be expecting answers for. These 23 questions should be enough to keep your Complaints Team Busy.

She then informed the Trust that she 'will of course submit more questions'.

Request 8

11. Also on 9 December 2009 the complainant requested the following information from [Individual Ae Redacted].

'I would very much like you to tell me if your 'care' team was active in 'treating' [Individual C redacted] before 26TH May 2009.

...

I would like to know if you were advising incompetent [Individual A redacted] and [Individual B redacted] – or anyone else for that matter – in [Individual C redacted]'s 'care'...

Request 9

12. Also on 9 December 2009 the complainant requested the following information from [Individual Ab redacted].

'[Individual Ab redacted] I would very much like you to tell me where and when you were approached by [Individual A redacted] and [Individual B redacted] to 'treat' patient [Individual C redacted] with palliative 'care'.

Do you treat many patients?...

'You advised [Individual A redacted] and [Individual B redacted] without meeting [Family redacted] or speaking to [Individual C redacted]. What information were you given in this conversation about [Individual C redacted] and me?

Were you given any information from the elusive [Individual I redacted]?

When had you worked with [Individual I redacted]?

You write that there is extensive documentation – did you speak to anyone other than incompetent [Individual A redacted] and [Individual B redacted] – from our former Hospital – ST MARY'S HOSPITAL – who treated [Individual C redacted]? Or knew me?

...

How many patients did/and do you 'treat' without ever speaking to or meeting – who have no knowledge you are making DO NOT ATTEMPT TO RESUSCITATION notices in their medical records?'

Other requests that have been considered in this case:

As noted, a number of other requests were made that mostly relate to the complainant's concerns about the treatment of her mother. The Commissioner will summarise their scope below:

10	11 December 2009.	Request has five elements.
11	24 December 2009.	Request has thirty six individual elements.
12	24 December 2009 (2)	Repeat request of 6, 8 and 9. Also other allegations, but no further requests.
13	4 January 2010.	Request has thirty individual elements and some sub-elements.
14	26 January 2010.	Request has nine elements (split into two classes by the Commissioner – one her personal data and one not).
15	22 February 2010.	Request has one element.
16	9 March 2010.	Request has six elements.
17	19 April 2010.	Request has nineteen elements and some sub elements.
18	4 May 2010 (1).	Request relates to at least eleven members of staff and has six elements (split into two classes by the Commissioner – one her personal data and one not).

19	4 May 2010 (2).	Request has two elements.
20	7 May 2010 (1).	Request has nineteen elements (split into two classes by the Commissioner – one her personal data and one not).
21	7 May 2010 (2).	Request has four elements.
22	12 May 2010.	Request has three elements.
23	17 May 2010.	Request has six elements.
24	20 May 2010.	Request has one element.
25	14 June 2010.	Request has two elements.
26	14 July 2010.	Request has two elements.

Annex 2 – Legal Annex : Relevant Statutory Provisions

Section 1 - General Right of Access

Section 1 of the Act 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) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."
- (3) Where a public authority –
 - (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."
- (4) The information –
 - (a) in respect of which the applicant is to be informed under subsection (1)(a), or
 - (b) which is to be communicated under subsection (1)(b),is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."
- (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."

- (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Section 10 - Time for Compliance

Section 10 of the Act provides that:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

(2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

(3) If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 14 – Vexatious or repeated requests

Section 14 of the Act provides that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Section 17 - Refusal of request

Section 17 of the Act provides that:

(1) 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

Section 21 - Information Accessible by other Means

Section 21 of the Act provides that –

‘(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.’

(2) 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.’

(3) 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.’

Section 40 – Personal information

Section 40 of the Act 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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.”

Data Protection Act 1998

Section 1 – Personal Data

Section 1 provides that:

‘In this Act, unless the context otherwise requires—

“personal data” means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;’

Section 2 – Sensitive Personal Data

Section 2 provides that:

‘In this Act “sensitive personal data” means personal data consisting of information as to—

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,

- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Section 7 - Right of access to personal data

Section 7 provides that -

(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, and

(d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.

Section 42 - Request for assessment

Section 42 provides that:

'(1) A request may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the provisions of this Act.

(2) On receiving a request under this section, the Commissioner shall make an assessment in such manner as appears to him to be appropriate, unless he has not been supplied with such information as he may reasonably require in order to—

- (a) satisfy himself as to the identity of the person making the request, and
- (b) enable him to identify the processing in question.

(3) The matters to which the Commissioner may have regard in determining in what manner it is appropriate to make an assessment include—

- (a) the extent to which the request appears to him to raise a matter of substance,
- (b) any undue delay in making the request, and
- (c) whether or not the person making the request is entitled to make an application under section 7 in respect of the personal data in question.

(4) Where the Commissioner has received a request under this section he shall notify the person who made the request—

- (a) whether he has made an assessment as a result of the request, and
- (b) to the extent that he considers appropriate, having regard in particular to any exemption from section 7 applying in relation to the personal data concerned, of any view formed or action taken as a result of the request.'

Schedule 2 - Conditions relevant for purposes of the first principle: processing of any personal data

1. The data subject has given his consent to the processing.
2. The processing is necessary— (a) for the performance of a contract to which the data subject is a party, or (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.

5. The processing is necessary—

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

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

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

Schedule 3 - Conditions relevant for purposes of the first principle: processing of sensitive personal data

1. The data subject has given his explicit consent to the processing of the personal data.

2. (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.

(2) The Secretary of State may by order—

(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

3. The processing is necessary—

(a) in order to protect the vital interests of the data subject or another person, in a case where—

(i) consent cannot be given by or on behalf of the data subject, or

(ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or

(b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.

4. The processing—

(a) is carried out in the course of its legitimate activities by any body or association which—

(i) is not established or conducted for profit, and

(ii) exists for political, philosophical, religious or trade-union purposes,

(b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,

(c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and

(d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject

6. The processing—

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7. (1) The processing is necessary—

(a) for the administration of justice,

(b) for the exercise of any functions conferred on any person by or under an enactment, or

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order—

(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.