



FREEDOM OF INFORMATION ACT 2000 (Section 51)

INFORMATION NOTICE

Dated 6th June 2006

Name of Public Authority: **House of Commons**

Address of Public Authority: **House of Commons
London
SW1A 0AA**

The Information Commissioner (the "Commissioner") has the power under section 51 of the Freedom of Information Act 2000 (the "Act") to serve a public authority with a notice (in the Act referred to as "information notice") requiring it, within such time as specified in the notice, to furnish the Commissioner, in such a form as may be so specified, with such information relating to an application under section 50, to compliance with any of the requirements of Part I of the Act or to conformity with the codes of practice under section 45 and 46.

Nature of Complaints

The Information Commissioner (the "Commissioner") has received complaints in relation to requests for information made to the House of Commons for information pertaining to the expenses claimed by Members of Parliament. A complete list of these complaints can be found in Annex A to this Notice.

The Commissioner is considering, under section 50 of the Freedom of Information Act 2000 (the "Act"), whether the requests have been dealt with in accordance with the requirements of Part I of the Act.

The Commissioner considers the requested information to be of relevance to this purpose.

On 17 October 2005 the Commissioner made an informal request to the House of Commons to provide access to the information requested above. A copy of the request is attached to this Notice.

The House of Commons replied in an email of 18 October 2005. To date the Commissioner has not been provided access to the information he requested. A copy of the response is attached to this Notice.

References: FS50070469, FS71451, FS50079619, FS50073293,
FS50083202



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Information Required

In view of the matters described above the Commissioner hereby gives notice that in exercise of his powers under section 51 of the Act he requires that the House of Commons shall, within 30 days of the date of this Notice, provide the opportunity to the Commissioner and/or his nominated staff

- to inspect the information held in relation to the expenses claimed by Members of Parliament and refused to the applicants listed in Annex A
- to inspect the information contained in other records relating to the expenses claimed by Members of Parliament for comparative purposes.

Failure to comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Information Notice is served. If Notice of Appeal is served late the Tribunal will

References: FS50070469, FS71451, FS50079619, FS50073293,
FS50083202



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 6th day of June 2006

Signed:

Phil Boyd
Assistant Commissioner

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

Freedom of Information Act 2000 (Section 51)

Information Notice

Date 19 October 2006

Public Authority: Her Majesty's Treasury
Address: 1 Horse Guards Parade
London
SW1A 2HQ

RECEIVED FOR SCANNING

19 OCT 2006

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51 – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the complainant) of [REDACTED] to HM Treasury on the 6 April 2005, has been dealt with in accordance with the requirements of Part I of the Act.

The complainant made his application for a decision on the 3 November 2005 by confirming his wish to proceed with a complaint that he had previously made on the 24 June 2005.

Nature of Complaint

The complainant made a request to HM Treasury on the 6 April 2005 for;

"...Counsel's Opinion supporting Mr Gordon Brown's declaration of the Financial Services and Markets Bill's compatibility with the Human Rights Act 1998... [and]...any documentation and communications the Treasury (Mr Brown in particular) has with regard to this compatibility with human rights."

HM Treasury refused the request and issued a refusal notice on the 5 May 2005.

On the 24 June 2005 the complainant forwarded a copy of the refusal notice to the Commissioner and complained that he found the response "entirely unsatisfactory", at which time he was advised by the Commissioner to pursue the matter through the department's internal complaints procedure.

Following the internal review the complainant informed the Commissioner, on the 3 November 2005, that he still wished to pursue his complaint over HM Treasury's refusal of his request under section 50 of the Act.

Despite requests and correspondence over an extended period the Commissioner is not satisfied that HM Treasury has provided him with sufficient information relating to the application to allow him to properly consider the complaint in this matter.

Information Required

In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that Her Majesty's Treasury shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:

- 1) Counsel's Opinion supporting Mr Gordon Brown's declaration of the Financial Services and Markets Bill's compatibility with the Human Rights Act 1998 and any documentation and communications the Treasury (Mr Brown in particular) has with regard to this compatibility with human rights, other than that which it has previously supplied.
- 2) The information to be provided should include all legal advice obtained by HM Treasury on the Financial Services and Markets Bill's compatibility with the Human Rights Act 1998, including any legal advice provided by the Law Officers, other than that which it has previously supplied.
- 3) HM Treasury should also furnish the Commissioner with confirmation that it does not hold any additional legal advice on this matter.

Reference: FS50081525



Failure to Comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Dated the 19th day of October 2006

Signed: 

Information Commissioner

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



Freedom of Information Act 2000 (Section 51)

RECEIVED

20 APR 2007

FOR COMMISSIONER

Information Notice

19 April 2007

Public Authority:
Address:

General Medical Council
Regent's Place
350 Euston Road
London
NW1 3JN

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the complainant) of [REDACTED] to the General Medical Council ('the GMC') on 15 April 2005, has been dealt with in accordance with the requirements of Part I of the Act.



Nature of Complaint

██████ requested that the GMC provide information relating to a complaint made to the GMC regarding ██████ ██████ submitted a complaint to the Commissioner because she was dissatisfied with the GMC's handling of the request in that it refused to disclose some of the information requested, referring to section 41 of the Act and citing section 40. In subsequent communication with the Commissioner the GMC have also cited section 32.

Information Required

The Commissioner hereby gives notice that in exercise of his powers under section 51 of the Act, he requires that the public authority shall, within 30 days of the date of this Notice, furnish the Commissioner with the following information.

1. ██████ PCC Transcript 29/01/2001
2. ██████ PCC Transcript 30/01/2001
3. ██████ PCC Transcript 01/08/2001

The Commissioner requires that the public authority indicate clearly which parts of the information have previously been released to the complainant, that any part of the information that has been exempted is marked clearly as to which exemption has been applied in each instance.

Failure to Comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

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

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk


Reference: FS50088137



Information Commissioner's Office

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

Dated the 19th day of April 2007

Signed: . 

**Jane Durkin
Assistant Commissioner**

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

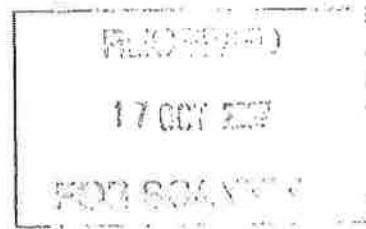
Freedom of Information Act 2000 (Section 51)

Information Notice

16 October 2007

Public Authority: National Offender Management Service (as an executive agency of the Ministry of Justice)

Address: Abell House
John Islip Street
London
SW1P 4LH



Section 51

1. Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Section 51(8) provides that information in accordance with section 51 includes unrecorded information.

Application under section 50

2. The Commissioner has received an application under section 50 for a decision as to whether a request for information made by [REDACTED] (the complainant) of [REDACTED] to the National Offender Management Service (NOMS) on 16 January 2005, has been dealt with in accordance with the requirements of Part I of the Act. At the time of the request NOMS was an executive agency of the Home Office. However responsibility for NOMS transferred to the Ministry of Justice ('MOJ') on 9 May 2007 and therefore this information notice is served on the MOJ.

Nature of Complaint

3. The public authority responded to the request on 27 January 2005. This letter did not specifically address the points in the complainant's request and cited section 40(2) of the Act in respect of the certificate that he had asked for.
4. Although the complainant complained about the response that he had received to his request by letter of 2 February 2005 and further correspondence passed between the public authority and the complainant, the public authority did not conduct an internal review of its decision not to release the information.
5. The complainant therefore complained to the Commissioner by letter of 27 October 2005 about the way his request had been handled and that he had not received all of the information that he requested.
6. During a telephone conversation with the Commissioner on 17 August 2006, the public authority explained that it had not originally treated the request as having been made under the terms of the Act. The public authority requested that the Commissioner provide it with copies of the relevant documents relating to the matter. The Commissioner therefore sent the public authority copies of the request, the refusal notice and the other pertinent correspondence on the understanding that the public authority would conduct an internal review in the time taken for the case to be allocated to a complaints officer for investigation.
7. At the time of allocation, the review had not been conducted. The Commissioner was asked again by the public authority to provide the relevant documents. This was done on 16 May 2007. The internal review was then carried out by the public authority and the outcome communicated to the complainant in a letter of 28 June 2007. The certificate was sent to the complainant in redacted form and a lot more information was provided by way of answers to the complainant's questions.
8. Following this, the complainant confirmed to the Commissioner that he was not satisfied with this response to his request and that he wished to pursue his complaint about the response to his request and the redactions made to the certificate.
9. The Commissioner therefore asked the public authority for further information and submissions to assist with his investigation. This was done initially by telephone call of 23 August 2007 and was followed by a letter and an email of the same date.
10. To date, the Commissioner has not received a response to his email and letter of 23 August 2007. The public authority did email the Commissioner on 29 August 2007 to explain that the department had transferred to the Ministry of Justice and provided the name of a contact that would be responsible for the reply.
11. When no response was received by 27 September 2007, the Commissioner telephoned the public authority and it was agreed that it would respond by 12

October 2007. The Commissioner made further telephone calls to the public authority on 5, 8 and 12 October 2007 to ensure that it still intended to respond by the agreed deadline. On 8 October 2007, it was confirmed that the response would be with the Commissioner as agreed. On the other two occasions, the contact was not in the office.

Information Required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the public authority shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:
13. A full and comprehensive response to the Commissioner's letter and email of 23 August 2007 in particular:
 - A complete unredacted copy of the certificate requested by the complainant.
 - The name of the official that set the tariff has been withheld on the basis that the exemptions at sections 40 and 38 of the Act apply. Please provide a more detailed explanation as to why these exemptions apply. In particular, please explain why it would be unfair to release the information, thus breaching the first data protection principle in relation to section 40. Please also provide an explanation of the harm that would, or would be likely to arise, in relation to the official in respect of section 38. Please also provide more detail about the public interest factors considered for and against disclosure in relation to section 38 and explain why in this case the public interest was found to favour maintaining the exemption.
 - Please confirm whether the official's name appears on the original certificate.
 - Paragraph 3 of the certificate was withheld on the basis that it was personal data of the prisoner and that section 40 applied. It was determined that disclosure would breach the first data protection principle. Please provide further details to explain why disclosure of this information would be unfair and/or unlawful.
 - Within the internal review letter of the 28th June 2007, you explain that the tariff certification process was introduced prior to the commencement of the Criminal Justice Act. Please confirm whether there is any recorded information held in relation to the tariff certification process and the introduction of it. If such information is held, please either provide it to [REDACTED] or to me with details of any exemption(s) that applies to it.
 - Whilst [REDACTED] request is not clear at all points with regard to what recorded information he requires, it seems to me that this is one of the matters upon which he was trying to obtain information.
 - [REDACTED] has asked for details of the transfer of duty from the Home

Secretary to the Prison Minister and then to the official that signed the certificate. Please confirm whether NOMS holds recorded information relating to this delegation process. If it is held, please either provide it to [REDACTED] or to me with details of the exemption that applies to it and why.

14. It occurs to me that the official that signed the certificate may be an employee of the Prison Minister much as I am an employee of the Information Commissioner and that it is in this capacity that the official carries out his/her duties in setting tariffs. Please confirm whether my assumption is correct if this is not apparent from the information relating to the bullet point above.

Failure to Comply

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

Right of Appeal

16. There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

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

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

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

Dated the 16th day of October 2007

Signed: [REDACTED]

Steve Wood
Assistant Commissioner

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

FS50104994



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

FREEDOM OF INFORMATION ACT 2000 (Section 51)

INFORMATION NOTICE

Dated 8 June 2006

Name of Public Authority: HM Treasury
Address of Public Authority: HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint in relation to a request for information made to HM Treasury. This was received from [REDACTED] and was for "all the relevant papers relating to the decision to reduce income tax by one pence in the pound announced in the budget in 1999."

The Commissioner is considering, under section 50 of the Freedom of Information Act 2000 (the "Act"), whether the request has been dealt with in accordance with the requirements of Part I of the Act.

Information previously requested

On 17 February 2006, the Assistant Commissioner, Phil Boyd made an informal request by email to you to provide background information to enable him to make a determination of [REDACTED] complaint. Mr Boyd asked for a response within 20 working days. This would be consistent with the undertakings given in the Memorandum of Understanding between the Commissioner and The secretary of State for Constitutional Affairs on behalf of central government departments. A copy of this email is attached.

Follow up emails were sent on 6 April and 3 May 2006.

Initially Mr Boyd was advised, on 13 March 2006, that there would be a delay in response because officials who would contribute to the response were heavily involved in preparations for the Budget. Subsequently he was advised on 23 May 2006 that the delay was caused by pressure of work on "the relevant Managing Director".

To date, no substantive response has been received to these informal requests for information.

FS50104994



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Information Required

In view of the matters described above the Commissioner hereby gives notice that in exercise of his powers under section 51 of the Act he requires that HM Treasury shall, within 30 days of the date of this Notice, furnish the Commissioner with the information requested in Mr Boyd's email of 17 February 2006.

Form in which information must be supplied

The above information may be provided in hard copy form or electronically.

Failure to comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

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

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7

FS50104994



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

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

Dated the 8th day of June 2006

Signed: 

Graham Smith
Deputy Commissioner

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

Reference: FER0066052

ENVIRONMENTAL INFORMATION REGULATIONS 2004

INFORMATION NOTICE

Dated 2005

Name of Public Authority: East Riding of Yorkshire Council.

Address of Public Authority: County Hall
Beverley, East Riding of Yorkshire
North Humberside
HU17 9BA

Nature of Complaint:

The Information Commissioner (the "Commissioner") has received a complaint in relation to a request for information made to East Riding of Yorkshire Council (the "Council").

The complaint is that the Council has refused the complainant's request for "a copy of the contract signed between the Council and WRG Ltd. over the future disposal of waste to meet Government landfill targets".

The Commissioner is considering under section 50 of the Freedom of Information Act 2000 (as amended by Regulation 18 of the Environmental Information Regulations 2004 (the "Regulations")), whether the request has been dealt with in accordance with the requirements of Parts 2 and 3 of the Regulations.

On 30th March 2005 the Commissioner made an informal request to the Council to provide a copy of the contract, together with any submissions in support of its claim to the exceptions provided in the Regulations. A copy of the request is attached to this Notice.

The Commissioner has since been in contact with members of staff at the Council who are responsible for dealing with the request. On each occasion the Commissioner received assurances that the requested information would be sent within a given period. Despite these assurances the Commissioner has still not received the information in response to this request.

Comment [b1]: For the record, might be a good idea to document precisely how many times we have been in touch with them to try to get this info?

Reference: FER0066052

Information Required

In view of the matters described above the Commissioner hereby gives notice that in exercise of his powers under Regulation 18 he requires that the Council shall, within 30 days of the date of this Notice, furnish the Commissioner with the following information:

- *A copy of the contract between the Council and WRG Limited over the future disposal of waste to meet Government landfill targets as requested by the complainant.*
- *Any submission which the Council wishes to make in support of its claim to the exceptions to the duty to disclose this information under Regulation 5 of the Environmental Information Regulations 2004.*

Failure to comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Reference: FER0066052

Dated the day of 2005

Signed:

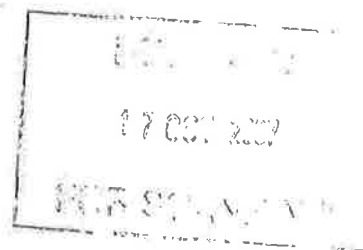
Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Freedom of Information Act 2000 (Section 51)

Information Notice

17 October 2007

Public Authority: Department of Health
Address: Richmond House
Whitehall
London
SW1A 2NS



Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Section 51(8) states that "in this section "information" includes unrecorded information.

Application under section 50

The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the "complainant") of [REDACTED] to the Department of Health (the "public authority") on 21 June 2005, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

The complainant emailed the public authority on 21 June 2005 and requested the following information under the Act:

- "All minutes and correspondence relating to meetings and conclusions reached in formulating the Standing Dental Advisory Committee "Conscious Sedation in the Provision of Dental Care" A Report of an expert group on sedation for dentistry commissioned by the Department of Health 2003."

The public authority did not respond to this request, and in an email dated 18 July 2005 the complainant emailed again and stated,

- "I request that you furnish me with all minutes, communications and relevant information of the Standing Dental Advisory Committee for Conscious Sedation in the Provision of Dental Care, Report of an expert group on sedation for dentistry, commissioned by Department of Health, 2003."

The public authority responded in a letter dated 6 September 2005 and stated,

- "With regard to the report of the Expert Group on Conscious Sedation convened by the Standing Dental Advisory Committee... As our earlier letter indicated, we considered that these papers were exempt from disclosure under section 35 of the Freedom of Information Act, relating to the formulation and development of government policy...this decision and the handling of the request will be reconsidered in the internal review."

The public authority then conducted an internal review, and in a letter dated 1 November 2005 stated,

- "I am afraid that we remain of the view that these papers are exempt from disclosure under section 35 of the Freedom of Information Act, relating to the formulation and development of government policy. We have examined all the relevant papers and concluded that the exemption was correctly applied and that there are no grounds for seeking to overturn the Department's decision to withhold this information. We accept the public interest is served when people are able to assess the quality of advice supplied to Ministers and subsequent decision making. However these benefits have to be weighed against the need for objective advice and any deterrent effect disclosure might have on external experts who might be reluctant to provide advice if it could be disclosed in the future. In particular, we consider that advisers should be able to put forward innovative ideas without the fear that nascent proposals could be held up to ridicule."

On 1 May 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the refusal to disclose the information in question was appropriate.

In order to investigate this complaint the Commissioner wrote to the public authority on 25 July 2007 and asked for an explanation as to the refusal to provide the requested information, as well as information about how it had carried out the public interest test. The Commissioner also asked the public authority to provide him with a copy of the withheld information.

The Commissioner did not receive a response from the public authority to this letter. He contacted the public authority again by letter on 31 August 2007 and asked for a response to his letter of 25 July 2007. He asked for a response by no later than 18 September 2007. Despite this letter the public authority failed to provide the Commissioner with a substantive response to his letter of 25 July 2007.

The Commissioner then contacted the public authority by way of a telephone call on 25 September 2007 in order to ask for it to respond to his letter of 3 July 2007. He was informed that the response had been drafted, but needed to be finalised, and that the public authority would respond by 2 October 2007.

Having received no response, the Commissioner again contacted the public authority by telephone on 4 October 2007 and asked for a response to his initial letter. He was again told that the response was still in draft form, but needed to be finalised, and that the public authority would respond by 12 October 2007.

Again having received no response, the Commissioner emailed the public authority on 15 October 2007, and informed it that unless he received a response to his letter by 17 October 2007 he would issue an Information Notice.

The public authority responded by way of a telephone call on 15 October 2007 and advised the Commissioner that it would need another two weeks before it was able to provide a substantive response.

Having considered the above, and in order to progress the case, the Commissioner believes it is appropriate for him to issue an Information Notice in regard to this case.

Information Required

In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the public authority shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:

In order to investigate this complaint the Commissioner requires sight of the information withheld by the public authority in its letter to the complainant of 1 November 2005, namely:

- All minutes and correspondence relating to meetings and conclusions reached in formulating the Standing Dental Advisory Committee "Conscious Sedation in the Provision of Dental Care" A Report of an expert group on sedation for dentistry commissioned by the Department of Health 2003.

The Commissioner also notes that the public authority quoted section 35 in regard to the withheld information.

In order assist the Commissioner's investigations he requires the public authority to answer the following questions:

- What was the reasoning behind the decision to apply section 35 in respect of the complainant's information request?
- What is the reasoning behind the public authority's carrying out of the public interest test in relation to section 35, and what were the considerations as to how the public interest in maintaining the exemption outweighed the public interest in disclosure?

Failure to Comply

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

Reference: FS50119242



Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Dated the 17 day of October 2007

Signed:



Steve Wood
Assistant Commissioner

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

Freedom of Information Act 2000 (Section 51)

Information Notice

18th August 2008

Public Authority: Department for Business, Enterprise and Regulatory Reform
Address: 1 Victoria Street
London
SW1H 0ET

SCANNING

18 AUG 2008

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the complainant) of [REDACTED] to the then Department for Trade and Industry (from hereon in referred to as BERR), on 21 May 2005 has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

On 21 May 2005 the complainant wrote to BERR. Citing both the Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (EIR) he requested the following information:

- a) A list of all individuals who have been seconded to work on issues related to Iraq, in BERR, in public bodies overseen by BERR, in the (Iraq) Coalition Provisional Authority (April 2003 – June 2004), or in International Organisations of which the UK is a part.

For each individual, please provide their name, the dates of their secondment, their job title and role in the secondment, the name of their regular employer from which they are/were seconded, and their job title in their regular employer

- b) A list of all consultants hired to work on issues related to Iraq, by BERR, by public bodies overseen by BERR, or by International Organisations of which the UK is a part.

For each consultant, please provide their name, organisation, dates of contract, and an outline of the purpose of their contract.

- c) Correspondence and minutes of meetings, with oil companies, their consultants and representatives and oil industry trade associations, on the subject of Iraq.

Please include all correspondence these companies and organisations have had with Government departments, of which BERR has copies, and not only those addressed to or signed by BERR itself; and likewise with meetings.

The complainant also asked to be given the names of all the files (and file details) in which such information was held and the names of the individuals and units dealing with such issues.

BERR did not reply substantively until 7 December 2005 and only after the intervention of the Commissioner. At this point BERR informed the complainant that it had seconded individuals to work in the power, water and healthcare sectors in Iraq. However, it said that it would not release their identities and cited the exemptions in sections 38 and 40 of the Act as justification, as well as the Data Protection Act 1998. Information relating to BERR contact with oil companies was also refused under section 38. In response to the request for file titles, BERR said that it had no files possessing titles specifically relating to consultants or secondees to Iraq and cited section 12 of the Act on the grounds that examining the files it did have, to see if they held any relevant information, would exceed the appropriate limit of £600 for central government departments. Finally, BERR said that this request had been dealt with under the Act as it did not consider the information sought to be environmental in nature: however BERR thought it likely that, under the EIR, regulations 12(5)(a) and 12(5)(f) would have been equally applicable. The complainant was invited, if dissatisfied, to seek an internal review.

On 19 January 2006 Friends of the Earth (FOE), who had now taken up the matter on behalf of the complainant, wrote to BERR to request an internal review of its handling of the complainant's request. In asking for the internal review FOE said that BERR had not provided an explanation for the significant delay in dealing with the complainant's request. It also suggested that BERR had misunderstood the request as it had referred to staff and secondees working in Iraq and the oil industries. It explained to BERR that the complainant's request was in fact broader in scope because it had asked for details of staff working on all issues related to Iraq and the oil industries rather than just the

details of staff working in Iraq. FOE said that it did not accept the section 38 argument and suggested that, even if some information did need to be withheld, other information could have been released. FOE said that the complainant had no interest in the water and healthcare sectors. Finally, FOE said it considered BERR to be in breach of section 17 of the Act as it had failed to take account of the public interest test when applying the section 38 exemption.

BERR failed to provide the internal review until 11 October 2007 and again this was only after the intervention of the Commissioner. BERR said that its original response to the request was inappropriate and it was no longer seeking to rely on the exemptions in sections 38 and 40 of the Act. BERR said that the correct approach at the time, and the approach it intended to adopt now, would have been to refuse the request under section 12 of the Act on the grounds that the cost of complying with the request would exceed the appropriate limit of £600. BERR said that it held over 550 files, a mixture of both electronic and paper records, relating to Iraq. All of these would need searching, at individual document level, in order to establish whether or not any relevant information was held. Even if the request were to be narrowed to exclude the water or healthcare sectors (and DBERR said that it would be willing to consider such a narrowed request), BERR said that the cost of compliance would still exceed the appropriate limit.

The Commissioner wrote to BERR on 12 November 2007 to ask for further information regarding its application of section 12 of the Act. As a result of that request a member of the Commissioner's staff attended a meeting at which BERR's information manager was present, as well as representatives of its Iraq and FOI teams. This meeting took place on 29 November 2007. At that meeting the operation of DBERR's electronic records system (known as Matrix) was explained to the Commissioner and DBERR confirmed its view that it would have been impossible to deal with the very broad nature of the original request without exceeding the appropriate limit. It also said that a more narrowly based request could have been met without exceeding the appropriate limit although, even had such a request been made, it might have proved necessary to cite other exemptions depending on the nature of the information concerned. The Commissioner was provided with a printed sample of file titles which could contain information relevant to the subject-matter of the request.

At the meeting of 29 November 2007 the Commissioner invited the public authority to provide an estimate of the costs it would expect to incur in dealing with the complainant's request.

Following a number of chasing reminders, BERR replied to the Commissioner on 17 March 2007 at which point it said that it did not believe that it was obliged to produce an estimate of this kind. It said that in its view the only way an estimate could be arrived at would be by effectively meeting the request. BERR maintained that the cost of complying with the request would exceed the appropriate limit.

On 3 April 2008 BERR provided the Commissioner with further representations in support of its position that it had applied section 12 correctly.

Information Required

In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the Department for Business, Enterprise and Regulatory Reform shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:

- A sample of information falling within the scope of part c) of the complainant's request. The Commissioner expects to be provided with information on each element of this part of the request, both copies of correspondence and minutes of meetings, where this information is held.
- BERR's comments on why it is not possible to search for the information requested by focusing on a smaller number of business areas and/or specific areas of BERR's records management systems. In addition the Commissioner requires BERR's comments on the possibility that the information requested in parts a) and b) may be more easily retrieved by consulting its Human Resources or Finance departments to understand where the information is likely to be held, rather than a general search of the "Matrix" electronic records management system.
- A full estimate and breakdown of the costs that BERR would expect to incur in dealing with the complainant's request in full.

Failure to Comply

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

Reference: FS50121519



Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@tribunals.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Dated the 18th day of August 2008

Signed:

A black rectangular box redacting the signature of Steve Wood.

Steve Wood
Deputy Commissioner

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

Freedom of Information Act 2000 (Section 51)

Information Notice

Date: 1 October 2007

Public Authority: Health Professions Council
Address: Park House
184 Kennington Park Road
London
SE11 4BU

RECEIVED

- 1 OCT 2007

FOR SCANNING

Section 51

1. Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

2. The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] to the Health Professions Council (HPC) on 1 January 2007 has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

3. On 1 January 2007 the complainant made a request to the HPC for all papers the HPC held which related to a case involving her daughter and a physiotherapist who worked with her daughter. This request

followed a complaint made by the complainant to the HPC about the way the physiotherapist had dealt with her daughter. As a result of this complaint the HPC undertook an investigation, obtaining evidence from a number of people and led to a decision of an HPC investigation panel that there was no case to answer. The complainant then made her FOI request because she did not consider the letter she had received from the HPC contained the reasons why the panel reached its decision and in particular she wanted to know why [REDACTED]

4. On 28 March 2007 the HPC declined to disclose the information on the basis that it considered the information was primarily the personal data of [REDACTED] and was therefore exempt under section 40 of the Act. It added that the decision of the panel was contained in a letter sent to the complainant on 22 November 2006.
5. On 30 March 2007 the complainant responded and requested an internal review of the HPC's decision.
6. On 17 April 2007 the Chief Executive of the HPC replied to the complainant upholding the original decision that the information was exempt from disclosure under section 40 of the Act. He also added that the information was provided under a duty of confidence and was again exempt and that the public interest in maintaining confidentiality outweighed the public interest in disclosing the information.
7. On 19 June 2007 the Commissioner wrote to the HPC raising a number of questions. In particular he requested a copy of the exempt information, clarification as to whether the HPC was also applying section 41 to the information by virtue of its reference to confidentiality and whether it had considered if the information was the personal data of the complainant under the Data Protection Act 1998.
8. On 26 July 2007 the HPC responded to the Commissioner. It clarified the exemptions it was relying on but stated that it was unable to provide the Commissioner with a copy of the withheld information. It explained that it could not do so unless it was served with an information notice. If it provided the information to the Commissioner without an information notice ordering it to do so it considered that it would be in breach of the Health Professions Order 2001.
9. On 31 August 2007 the Commissioner wrote again to the HPC to seek further clarification as to why it was unable to provide the Commissioner with a copy of the withheld information. The Commissioner also explained his powers to obtain information and the manner in which it would be held by his office.

10. On 19 September 2007 the HPC replied and explained that the Fitness to Practise procedures operated by the HPC are set out in the Health Professions Order 2001 (the Order). The Order and the statutory rules made under it require that, if a panel concluded that there is no case to answer, the details should remain confidential. It added that there were no exemptions in its governing legislation allowing any form of disclosure, other than to protect the public. Therefore it argued that the only way in which it can disclose information is if it is required to do so under other legislation.
-

Information Required

In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the Health Professions Council shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:

Copies of all the exempt information referred to in the complainant's request as outlined in paragraph 3 above.

Failure to Comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email:
informationtribunal@tribunals.gsi.gov.uk	
Leicester	
LE1 6ZX	

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

Reference: FS50150404

Dated the 1 day of October 2007

Signed: .. 

Jane Durkin
Assistant Commissioner

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

Freedom of Information Act 2000 (Section 51)

Environmental Information Regulations 2004

Information Notice

Date 10 July 2008

Public Authority: Halton Borough Council
Address: Municipal Building
Kingsway
Widnes
Cheshire
WA8 7QF

RECEIVED FOR SCANNING

11 JUL 2008

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51 (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

The Commissioner has received an application for a decision under section 50 of the Freedom of Information Act 2000 (as amended by Regulation 18 of the Environmental Information Regulations 2004 (the "Regulations")), whether a request for information made by [REDACTED] (the complainant) of [REDACTED] to Halton Borough Council on 6 June 2006, has been dealt with in accordance with the requirements of Parts 2 and 3 of the Regulations.

Nature of Complaint

On 6 June 2006 the complainant wrote to the Council by email and requested the following information:

"We want a copy of all correspondence with the DfT that deals with tolling. Will you give me some idea of the volume of this. We also want a list of all communications (including emails) in the possession of the Council (whether the council is the addresser or addressee or not) that refer to tolling on the proposed and/or existing bridge. When we have the list we may be making further requests to see some or all of the documents..."

The Council responded on 27 July 2006 and refused to provide the requested information. It claimed that the information was exempt from disclosure on the grounds that the information was protected by legal professional privilege, that the Council's commercial interests would be harmed if the information were made public and that the information would be likely to be published at a public inquiry.

████████████████████ contacted the Council later the same day and requested an internal review of the decision to withhold the information.

On 25 August 2006 the Council contacted the complainant and advised that its decision to withhold the information had been upheld. The complainant contacted the Commissioner on 20 October 2006 and requested he review the Council's decision to withhold the requested information.

The Commissioner wrote to the Council on 11 July 2007 and asked it to ensure it had identified all of the information it held which was relevant to the complainant's request. In addition, he asked the Council to explain whether it had considered if the information requested constituted environmental information within the meaning of regulation 2(1) of the Regulations. The Council responded on 1 August 2007. It stated that it had considered whether the request should be handled under the Regulations, however had concluded that the information did not constitute environmental information. On 8 August 2007 the Commissioner wrote to the Council and explained that he was required to determine whether the information was environmental information before he could investigate other elements of the complaint. The Commissioner asked the Council to provide him with copies of the withheld information, by 28 August 2007, so that he may make this determination.

The Council responded on 30 August 2007 and provided copies of the requested information.

On 7 December 2007 the Commissioner wrote to the Council. He explained that he considered the requested information to fall within the definition of environmental information as defined by regulation 2(1) of the Regulations. He asked the Council to explain why the information was to be withheld from the complainant, with reference to the exceptions and public interest test set out at regulations 12 and 13 of the

Regulations. The Commissioner asked the Council to provide this explanation by 10 January 2008. Having not received a response, the Commissioner sent a reminder to the Council on 15 January 2008. The Commissioner asked the Council to respond by 29 January 2008.

The Council responded on 29 January 2008 and set out which exceptions it believed to apply to the withheld information and why.

On 27 February 2008 the Commissioner telephoned the Council to discuss its application of exceptions. He suggested that, on an initial reading, it appeared that some of the exceptions did not apply to the requested information. The Commissioner invited the Council to make further representations as to why the information should be withheld, and asked the Council to do this by 19 March 2008.

The Council wrote to the Commissioner on 19 March 2008 and informed him that some of the requested information had been disclosed to the complainant (documents 1, 3, 5, 7, 9 and 12 in appendix 1). Having not received any further representations as to why the information was to be withheld, the Commissioner wrote to the Council on 7 April 2008 and extended the deadline for provision of such information to 21 April 2008.

On 9 May 2008 the Council wrote to the Commissioner. It confirmed that further documents had been disclosed to the complainant (documents 2, 6, 10, 15, 16 and 17 in appendix 1) and provided a further explanation as to why it believed the remaining information should be withheld.

Following discussions with the complainant regarding the volume of information the Council held which was relevant to the request, the Commissioner contacted the Council on 19 May 2008 and asked it to conduct a further search to ensure that all of the information to which the request relates had been located and supplied to the Commissioner for his consideration. The Commissioner asked the Council to supply any further information located to the complainant or, if it was considered exempt from disclosure, for the Council to set out which exceptions were applicable and the public interest factors the Council had taken into account when deciding that the information should be withheld from disclosure. The Commissioner also asked the Council to provide some further information in support of its use of the exception provided for by regulation 12(5)(b). The Commissioner asked the Council to respond by 4 June 2008.

Following receipt of this communication, the Council contacted the Commissioner and requested an extension to this deadline. The Commissioner agreed that the Council did not have to respond until 11 June 2008.

The Council contacted the Commissioner on 9 June 2008 and provided six further documents which it had identified as falling within the scope of the complainant's request. It explained that the Council was taking advice as to whether these documents could be disclosed to the complainant, however did not provide any explanation as to which exceptions may be applicable.

Appendix 1 lists the information identified by the Council as being relevant to the complainant's requests. The information supplied to the Commissioner on 9 June 2008 is in *italics*.

Information Required

In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that Halton Borough Council shall, within 30 days of the date of this Notice, furnish the Commissioner with the information specified below, namely:

1. The Council should explain whether [REDACTED] of the Department for Transport was a lawyer at the time of writing to the Council and to Herbert Smith Solicitors and whether the Council considers the contents of [REDACTED] letters (documents 8, 11, 13, 14 and 22) to constitute legal advice. If the Council does consider the information to constitute legal advice it should explain why.
2. The Council should explain, in as much detail as possible, the searches it has conducted to satisfy itself that it does not hold any further information which is relevant to the complainant's request.
3. The Council should explain which exceptions apply to the six documents provided to the Commissioner on 9 June 2008, or confirm that it is willing to disclose those documents to the complainant.
4. When specifying an exception, the Council should clearly explain why it considers each exception to be applicable to the particular information and outline the public interest factors it has taken into account when deciding that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
5. The Council should confirm which part of the complainant's request, as set out in Appendix 1, document 20 relates to, by clarifying whether or not document 20 has ever been communicated to the Department for Transport.
6. The Council should explain how document 23 differs from document 4.

Failure to Comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

Leicester
LE1 6ZX

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

Dated the 10th day of July 2008

Signed:



**Nicole Duncan
Head of FOI Complaints**

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

Freedom of Information Act 2000 (Section 51)

Information Notice

2008

Public Authority: British Broadcasting Corporation
Address: White City
201 Wood Lane
London
W12 7TS

Section 51

1. Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

2. The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the complainant) to the BBC on 19 May 2007, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

3. On 19 May 2007 the complainant wrote to the public authority to request the following information regarding Eurovision Song Contests held since 2002. The request read as follows:

- i. "How much does the BBC contribute to the running of the Eurovision Song Contest. How is this paid and who is it paid to. I would like to obtain individual details for every particular contest since and including 2003.
 - ii. Could the BBC please detail how many people in Britain voted in the finals of the Eurovision Song Contest for the following years 2003, 2004, 2005, 2006, 2007.
 - iii. Could the BBC provide all internal (sic) documentation including emails which specifically relate to the voting of overseas audiences and juries during the actual finals of the Eurovision Song Contest. I am only interested in the contests which took place during 2003, 2004, 2005, 2006, 2007. Please note I am not interested in any semi-finals.
 - iv. Could the BBC provide all correspondence (including emails) with the European Broadcasting Union and or Eurovision television which deals with possible changes to the organisation and or running of the contest in general. This documentation will include but will not be limited to allegations of collusion and block voting, voting procedures in general, financing and transmission arrangements. It may touch upon actual contests or it may be about arrangements for future finals. I am interested in all correspondence which has been generated since 2003. This correspondence may be about the contest in general or it may be about specific contests since and including 2003.
 - v. Can the BBC provide copies of any research conducted by it or anyone acting on its behalf into the attitudes of British viewers and listeners to the Eurovision Song Contest."
4. The public authority responded to the request on 24 May 2007. It said that the request was outside the scope of the Act because the public authority is covered by the Act only in respect of information held for purposes 'other than those of journalism, art or literature'. Notwithstanding this, the public authority provided the complainant with a statement on the public authority, its links with the European Broadcasting Union and the Eurovision Song Contest. No internal review was offered.
5. On 24 May 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular the complainant argued that the public authority was wrong to refuse his request on the grounds that the derogation in schedule 1 of the Act applies to the information.
6. On 19 May 2008 the Commissioner wrote to the public authority with details of the complaint. In particular the Commissioner asked the public authority to provide him with copies of the information requested by the complainant as well as its comments on why the derogation applied to each element of the request. In view of the possibility that he may decide that the derogation does not apply, the

Commissioner asked the public authority to provide, without prejudice, details of any exemptions which it would seek to rely on in the alternative. The public authority was asked to respond within 20 working days.

7. The public authority acknowledged receipt of the Commissioner's letter on 20 June 2008 when it indicated that it would not be able to respond within the 20 working day deadline set by the Commissioner.
8. The Commissioner subsequently emailed the public authority regarding its failure to respond and also discussed the progress of the public authority's response on the telephone on 5 separate occasions. However, it was not until 13 October 2008 that the public authority provided a substantive response to the Commissioner's initial letter.
9. The public authority now explained why it considered the requested information to fall within the derogation in schedule 1 of the Act. It also explained that if the Commissioner were minded to conclude that the requested information is not derogated, it would seek to rely on section 12(1) of the Act on the grounds that the cost of complying with the request would exceed the appropriate limit. It also said that it considered that the exemption in section 43 of the Act (Commercial interests) applied to part v) of the request relating to viewing figures. The public authority provided the Commissioner with a sample of information falling within parts iii) and iv) of the request. It also said that it was prepared, without prejudice to its position, to release the information in part i) of the request. This information was subsequently made available to the complainant.
10. On 6 November 2008 the Commissioner wrote back to the public authority with his observations on its arguments regarding the extent to which the requested information was covered by the scope of the Act. The Commissioner said that based on its submission, it appeared that some of the information was indeed derogated as the public authority suggested but that some information would need to be considered under the Act. The Commissioner invited the public authority's comments on this point and asked that it respond within 10 working days.
10. On 7 January 2009 the Commissioner contacted the public authority to ask that it prioritise responding to his letter of 6 November 2009.
11. On 9 January 2009 the public authority contacted the Commissioner to apologise for the delay and said that it would respond shortly.
12. On 13 March 2009 the Commissioner contacted the public authority again to once more ask that it respond substantively to his letter of 6 November 2008. The Commissioner explained that unless he received a response within the next couple of weeks he would need to give consideration to issuing an Information Notice in accordance with section 51 of the Act.
13. The public authority responded to the Commissioner's letter on 6 April 2009. It now provided the Commissioner with further comments as to why it considered that the requested information fell outside the scope of the Act. It also explained

that some of the sample documentation which it had provided to the Commissioner as part of its initial submission was no longer considered to be relevant to the request. Whilst maintaining that the requested information fell outside the scope of the request, the public authority now provided the Commissioner with details of two exemptions: section 41 (Information provided in confidence) and section 43 (Commercial interests) which it said would also apply to some of the sample documentation.

14. The Commissioner wrote back to the public authority on 7 May 2009. The Commissioner now said that he wished to return to the issue of whether answering the request would exceed the appropriate limit. The Commissioner explained that he had recently revised his position in respect of cases where sections 12(1) or 12(2) are applied and that it was now his view that a public authority may include the costs of searching both derogated and non-derogated information when making an estimate of the costs that it would reasonably expect to incur in dealing with a request. The Commissioner explained that if it would cost over the appropriate limit for a public authority to locate, retrieve and extract requested information from non-requested information, from documents that are either derogated or non-derogated, he would uphold the application of these sections.
15. The public authority had earlier said that if the Commissioner were minded to conclude that the requested information was covered by the scope of the Act, it would seek to rely on section 12(1) on the grounds that the cost of complying with the request would exceed the appropriate limit. Therefore the Commissioner now asked the public authority to provide him with an estimate of the costs it would reasonably expect to incur in locating, retrieving and extracting all of the information requested by the complainant, regardless of whether or not the public authority considered the information to be derogated.
16. The Commissioner noted that the public authority, when assembling a sample of information falling within the scope of parts iii) and iv) of the request, had said that it could not guarantee that it did not hold any information in addition to what was being provided. It explained that it had identified 10 people within the public authority who were most likely to hold the requested information and it had undertaken searches to determine if relevant information was held. The Commissioner now asked the public authority to provide him with further details of these 10 individuals: why they were most likely to hold the requested information and whether it had considered if there were any others within the public authority who would be likely to hold information of this kind.
17. The Commissioner asked the public authority to respond to his letter within 20 working days.
18. On 1 June 2009 the public authority contacted the Commissioner to explain that, due to unforeseen circumstances, it would not be able to respond to the Commissioner's letter within the deadline.
19. On 22 July 2009 the Commissioner contacted the public authority to ask it to update him on when he could expect to receive a response to his previous letter.

20. The public authority emailed the Commissioner on 5 August 2009 to say that it hoped to respond to the Commissioner by the end of that week or early in the following week.
21. On 27 August 2009 the public authority emailed the Commissioner again to apologise for the delay in responding and said that it hoped to provide the Commissioner with a submission within the next couple of days.
22. On 11 September 2009 the Commissioner contacted the public authority and asked it to confirm that it would send its submission by the following week. The Commissioner said that if a response was not received by then he would have to formally request a response via an information notice issued under section 51 of the Act.

Information Required

23. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the British Broadcasting Corporation shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:
 - A full breakdown of the costs it would reasonably expect to incur in locating, retrieving and extracting the information requested by the complainant, regardless of whether or not the public authority considers that information to be derogated.
 - Details of the 10 individuals whom the public authority believe were most likely to hold the information in parts iii) and iv) of the request, together with an explanation as to why it considered that these individuals were the most likely people to hold this information.

Failure to Comply

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

Right of Appeal

25. There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

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

Tel: 0845 6000 877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk

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

Dated the x day of x 200x

Signed:

xxxxxxx

Assistant / Deputy Commissioner

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

Freedom of Information Act 2000 (Section 51)

Information Notice

Date 23 September 2009

Public Authority: British Broadcasting Corporation
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the complainant) to the BBC on 23 June 2007 has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

1. The complainant has advised that on 23 June 2007 he made the following request for information to the British Broadcasting Corporation (BBC):

"I am enquiring into whether I could be sent the following information:

1. A copy of any contract, or agreement, between the BBC and Mr Michael Eavis (Organiser of the Glastonbury Festival), or between the BBC and Glastonbury Festivals Ltd., or between the BBC and the organiser of the Glastonbury Festivals.

2. A copy of any licence (artistic, commercial or otherwise), between the BBC and Mr Michael Eavis, or between the BBC and Glastonbury Festivals Ltd, or between the BBC and organisers of the Glastonbury Festivals.

Please can you provide me with old contracts between 2000 - 2007 if held, including any contracts governing the 2007 season, and also any contracts stipulated to take effect in the future".

If the information is publicly available please can you advise me.

If there are any problems please let me know".

2. The BBC responded on 25 June 2007 explaining that the requested information is not covered by the Freedom of Information Act. The BBC stated that the request falls outside of the scope of the Act because the BBC is covered by the Act only in respect of information held for purposes other than those of journalism, art or literature. The BBC stated that it was therefore not obliged to supply information held for the purposes of creating its output or information that supports and is closely associated with these creative activities.
3. The complainant wrote to the Commissioner on 27 June 2007 asking the Commissioner to investigate the BBC's handling of this information request.
4. In order to investigate this complaint the Commissioner wrote to the BBC on 17 July 2008. The Commissioner requested:
 - (i) further arguments from the BBC to support the application of the derogation;
 - (ii) which exemptions contained in Part II of the Act the BBC would rely on to withhold the requested information should the Commissioner conclude that the derogation did not apply; and
 - (iii) a copy of the withheld information.
5. The BBC acknowledged receipt of the Commissioner's request for information in an email dated 30 July 2008.

6. On 8 October 2008 the Commissioner emailed the BBC reiterating his request for information requested on the 17 July 2008. The BBC emailed their response on 9 October 2008 apologising to the Commissioner for the delay and to advise the submission was currently being drafted and that it would be with the Commissioner in the near future. The case then transferred between case-officers in the Commissioner's office.
7. On 24 August 2009 the Commissioner emailed the BBC again reiterating his request for information and to advise that unless a response was received by Monday 7 September 2009, an Information Notice would be issued in this case.
8. On 27 August 2009 in a telephone call to the Commissioner the BBC agreed that they would provide a response by Friday 18 September 2009. The BBC were advised that in the event the Commissioner did not receive their response by that date, an Information Notice would be issued.

Information Required

9. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the BBC shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:
 - A copy of the withheld information, comprising the following:
 - i. *A copy of any contract, or agreement, between the BBC and Mr Michael Eavis (Organiser of the Glastonbury Festival), or between the BBC and Glastonbury Festivals Ltd., or between the BBC and the organiser of the Glastonbury Festivals.*
 - ii. *A copy of any licence (artistic, commercial or otherwise), between the BBC and Mr Michael Eavis, or between the BBC and Glastonbury Festivals Ltd., or between the BBC and organisers of the Glastonbury Festivals, and p*
 - iii. *Please can you provide me with old contract between 2000 - 2007 if held, including any contracts governing the 2007 season, and also any contracts stipulated to take effect in the future".*
 - A detailed argument as to why the BBC considers the information requested is covered by the derogation to include: for what reasons did the BBC hold the information at the time of the request; for what reasons is the information now held and who the primary users of the information are.
 - An explanation of which exemptions the BBC would seek to rely on to withhold the information should the Commissioner conclude that the derogation does not apply.

Failure to Comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal

Tel: 0845 6000 877

Arnhem House Support Centre

Fax: 0116 249 4253

PO Box 6987

Email: informationtribunal@tribunals.gsi.gov.uk

Leicester

LE1 6ZX

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

Dated the 23 day of September 2009

Signed:

Assistant / Deputy Commissioner

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Freedom of Information Act 2000 (Section 51)

Information Notice

Date: 18 February 2009

Public Authority: UK Border Agency (a shadow agency of the Home Office)
Address: Central Freedom of Information Team
5th Floor, Whitgift Centre Block C
15 Wellesley Road
Croydon
Surrey CR9 3LY

Section 51

1. Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

2. The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the "complainant") of [REDACTED] to the then Immigration and Nationality Directorate (now UK Borders Agency) (the "public authority") on 24 February 2007 has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

3. The complainant made the following request for information on 24 February 2007:

"I understand that the Office of Surveillance Commissioners inspected the UK Immigration Service in 2005-6. I am writing to request:

- 1. A copy of the report's executive summary and/or introduction;*
- 3. A copy of the report's conclusions;*
- 4. A copy of the report's recommendations;*
- 5. If possible, a copy of the full report.*
- 6. A copy of your official response to its findings and recommendations."*

4. The public authority responded on 27 March 2007. It refused to disclose the information requested on the basis of the exemption at Section 31(1)(e).
5. The complainant requested an internal review on 29 March 2007 and the public authority advised him of the outcome of its internal review in a letter dated 10 July 2007. This review upheld its original position.
6. The complainant made an application to the Commissioner under Section 50 on 15 July 2007.
7. On 25 July 2007 the Commissioner wrote to the Home Office to advise receipt of this application. It was not clear at this stage whether this matter would be dealt with by the Home Office or by one of its agencies which dealt with immigration matters.
8. On 2 September 2008 the Commissioner wrote to the public authority asking for a copy of the withheld information and for its full and complete arguments as to the application of Section 31(1)(e) with specific and direct reference to the information. It set a deadline for response of 30 September 2008.
9. On 1 October 2008, the Commissioner wrote again to the public authority noting its failure to respond within the specified deadline and to ask for its response by 15 October 2008. The Commissioner provided the public authority with a copy of his letter of 2 September 2007 and reminded it of his powers under Section 51 of the Act to issue an Information Notice. He expressed the hope that it would not be necessary to resort to formal action to compel the public authority to provide a full response but commented that he may consider doing so where a full response to our letter of 2 September 2008 was not otherwise forthcoming.
10. In the intervening period, the public authority had apparently sent a letter to the Commissioner dated 26 September 2008. However, it was not received by the Commissioner until 2 October 2008. This letter explained that the public authority had undertaken to review its original position given the passage of time since the original request. It explained that it expected to complete this review within the next four weeks and by no later than 24 October 2008.
11. On 6 October 2008, the Commissioner wrote to the public authority welcoming its willingness to revisit its original position. He agreed to grant an extension of the deadline until 24 October 2008 given the circumstances. He also reminded the public authority of his powers under Section 51 as outlined above.

12. On 23 October 2008 the public authority called the Commissioner to advise that there would be a further short delay but that additional disclosure was likely. The Commissioner agreed to this in the circumstances but urged the public authority to make the proposed additional disclosure directly to the complainant. The Commissioner then undertook to contact the complainant to see whether he wished to pursue access to any information which remained withheld. Emails were exchanged between the public authority and the Commissioner on the same date to confirm what had been agreed. The Commissioner also asked the public authority to let him know when further disclosure had been made to the complainant.
13. On 7 November 2008, the public authority emailed the Commissioner to advise that further disclosure to the complainant was imminent but that some detail needed to be finalised. It advised that it hoped to make the further disclosure by the end of the following week (14 November 2008).
14. On 11 November 2008, the Commissioner emailed the public authority to agree to this further extension of time.
15. On 21 November 2008 the public authority emailed the Commissioner to advise that it was about to write to the complainant with its further disclosure. It advised that it would continue to withhold some information under Section 31 but that its reasoning would be set out in its letter to the complainant.
16. On 24 November 2008, the Commissioner wrote to the complainant to seek his views regarding this further disclosure.
17. On 25 November 2008, the complainant indicated that he was unhappy with the extent of the disclosure and said that he still wished to pursue his complaint. He also queried the public authority's apparent failure to provide a response to the final part of his request.
18. On 2 December 2008, the Commissioner wrote to the public authority to advise the complainant's wish to continue with his complaint. He asked for a full response to his letter of 2 September 2008 and provided a copy of the letter to the public authority. He asked for a copy of all the information caught by the scope of the complainant's original request indicating that which remained withheld from him and for the public authority's reasoning in this regard. The Commissioner explained that his investigation would focus on whether the remainder is exempt by virtue of Section 31(1)(e) of the Act.
19. The Commissioner also asked why no reference had been made to the final part of the complainant's original request. He reproduced the text of the original request which was as follows: 6. *A copy of [the public authority's] official response to [the Office of Surveillance Commissioners' report's] findings and recommendations.*" The Commissioner asked whether the public authority sent a response to the report in question and, where it did, the Commissioner asked that this response be included with the public authority's reply.

20. Noting that he had already extended numerous deadlines for response on this case (albeit in the hope that significant progress might be made without further investigation) the Commissioner set a new deadline for response of 9 December 2008. He asked the public authority to contact him straightaway where it envisaged any difficulty in meeting this new deadline.
21. On 3 December 2008, the public authority emailed the Commissioner to advise that it would have difficulties in meeting the new deadline due to non-availability of key staff. It advised that it aimed to respond by the end of the next week. The Commissioner took this to mean by 12 December 2008.
22. On 11 December 2008, the public authority emailed the unredacted report to the Commissioner. It advised that the response referred in item 6 of the complainant's original request had been located and was being considered for release although it anticipated that some of it would be withheld by virtue of Section 31(1)(e). It advised that there would be a further delay before it would be able to make any disclosure in response to item 6.
23. The public authority asked the Commissioner whether it would be acceptable to provide a disclosure in response to item 6 directly to the complainant and offer him a review where any information was withheld rather than first sending the information to the Commissioner.
24. On 15 December 2008, the Commissioner emailed the public authority acknowledging receipt of the report. He reminded the public authority that his letter of 2 December 2008 had asked for an indication as to which parts of the report remain withheld. He noted that this had not been supplied.
25. Regarding item 6, the Commissioner agreed that the public authority should contact the complainant directly but asked for a copy of any correspondence sent to him. He also asked that the public authority ensured that it provided the Commissioner with an unredacted copy of Item 6 (with redactions marked) where some of it was to be withheld from disclosure. The Commissioner urged the public authority to complete its deliberations as to further disclosure promptly and by no later than 16 January 2009. He also asked for an explanation as to why item 6 was apparently not included in the public authority's original deliberations in response to the complainant's request.
26. In the same email, the Commissioner reminded the public authority that it had asked for its *"full and complete arguments as to the application of Section 31(1)(e) with specific and direct reference to the information"*. He said that when the public authority provided an indication as to which parts of the report remain withheld (and any parts of Item 6 of [REDACTED] request which will remain withheld), it should, at the same time, provide any final arguments that it wished to submit regarding the application of Section 31(1)(e) to that withheld information. The Commissioner explained that if no further arguments were provided, he would base his decision on what he had received to date and pointed out that he did not have a copy of any covering letter that may have been sent to the complainant with its further disclosure. The Commissioner reminded the public authority that the most recent detail that he had with regard to the

public authority's arguments were those set out in its letter to the complainant of 10 July 2007. The Commissioner urged the public authority to provide him with a more up-to-date version of your arguments with direct and specific reference to any information which remains withheld.

27. He confirmed that the deadline for response to all the items set out in this email was 16 January 2009.
28. On 16 December 2008, the public authority provided copy of the redacted report along with a copy of the covering letter (dated 21 November 2008) it had sent to the complainant when it had disclosed the redacted report to him. It said that the arguments set out in that letter in relation to Section 31(1)(e) were the arguments it sought to rely on. It advised that it was continuing to work on what it referred to as the "*additional element*" of the complainant's request which the Commissioner understood to mean item 6 of the complainant's original request.
29. On 16 January 2009, the public authority emailed the Commissioner to advise that it was not in a position to respond to what it now referred to as the "*missing part*" of the complainant's request by the deadline that had been set for that day. It expressed the hope that it should be able to have a response ready within the next two weeks which the Commissioner understood to mean by 30 January 2009.
30. On 19 January 2009, the Commissioner emailed the public authority. In the email he agreed in the circumstances to allowing a further 10 working days for a response (i.e., by 30 January 2009) and reminded the public authority of his powers under Section 51 as outlined above. He set out those points which remained outstanding from his letter of 15 December 2008, namely the outcome of the public authority's deliberations regarding item 6 of the complainant's original request and its full and complete arguments as to the application of Section 31(1)(e) with specific and direct reference to the withheld information. The Commissioner commented that the arguments set out in the public authority's letter to the complainant did not "*for obvious reasons*" make specific and direct reference to the withheld information. The Commissioner invited further arguments and directed the public authority to recent rulings of the Information Tribunal regarding the likelihood of prejudice which were relevant to the application of Section 31(1)(e) in this case.
31. The Commissioner also commented on the content of the public authority's letter of 21 November 2008 to the complainant regarding its application of Section 40(2) which it had sought to apply in relation to some of the information it had withheld. He asked for its further arguments for relying on Section 40(2). The public authority had also sought to exclude certain information from the scope of the complainant's request. The Commissioner also set out why he disagreed with the public authority's view on this point.
32. On the same day, the public authority emailed a reply thanking the Commissioner for extending the deadline to 30 January 2009.

33. On 28 January 2009, the public authority wrote to the Commissioner explaining that it would not be able to meet the deadline of 30 January 2009. It explained that its decisions regarding disclosure would have to be made at a very senior level and that it was unlikely to achieve a result in time. It said that every effort was being made to progress matters. It explained that the original report was being reviewed for further disclosure and that some of the information caught by item 6 referred to information withheld in the original report. It explained that it would not be able to reach a conclusion on a disclosure in relation to item 6 without completing its deliberations regarding the original report. It explained that it would be likely to take further two weeks to complete this exercise.
34. On 2 February 2009, the Commissioner emailed the public authority and set out that he was prepared to re-set the deadline to 11 February 2009 in the circumstances.
35. On 4 February 2009, the public authority emailed the Commissioner in anticipation of a possible further delay due to non-availability of key staff.
36. On 13 February 2009, the public authority emailed the Commissioner to apologise for the continuing delay and to express the hope that it would be in a position to respond by 25 February 2009.
37. On 16 February 2009, the Commissioner emailed the public authority expressing regret that it had failed to meet the revised deadline and to advise that an Information Notice was now being drafted. He urged the public authority to respond as soon as possible.

Information Required

38. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the UK Border Agency shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:
 - The outcome of the public authority's further deliberations regarding item 6 of the complainant's original request
 - Its full and final arguments as to the application of Section 31(1)(e) with specific and direct reference to all the information within the scope of the entirety of the complainant's request (including item 6) that it continues to withhold
 - Its full and final arguments as to why disclosure of the names of all the individuals mentioned in the report would breach any of the data protection principles with specific reference to each individual.

Failure to Comply

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

Right of Appeal

40. There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

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

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

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

Dated the 18th day of February 2009

Signed:



Steve Wood
Assistant Commissioner

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

Freedom of Information Act 2000 (Section 51)

Information Notice

Date 15 April 2009

Public Authority: Department of Health
Address: Richmond House
79 Whitehall
London
SW1A 2NS

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

Section 51 provides –

(1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

The Commissioner has received an application under section 50(1) for a decision whether a request for information made by [REDACTED] (the "complainant") of [REDACTED] to the Department of Health (the "Department") on 15 September 2006, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

The complainant wrote to the Department on 15 September 2006 and requested the following information:

"...external and internal communications on the question of whether doctors should be required to take out insurance as a condition of their practicing in the United Kingdom, since 2000. If any part of the information requested is covered by one or more of the absolute exemptions in the Act, please treat this request as a request for that part of the information which is not covered by the absolute exemption."

The Department responded on 30 October 2006. It confirmed that it held the information requested however refused to provide it on the grounds that the exemptions within sections 40(2) (personal information) and 35 (formulation of government policy, etc) applied. In relation to section 35, the Department stated that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. Section 40(2) is an absolute exemption and therefore information withheld under this exemption fell outside the scope of the complainant's request.

On 31 October 2006 the complainant contacted the Department and asked for an internal review into its application of the section 35 exemption.

The Department responded on 13 August 2007. It confirmed its view that the original decision in respect of the complainant's request was correct. In communicating the outcome of the internal review, the Department clarified that it was relying on the exemption under section 35(1)(a) as a means of withholding the information, as it had not previously specified which subsections and paragraphs of section 35 it had considered to be applicable. Further, the Department set out additional public interest factors it believed to be relevant, again confirming its view that on balance, the public interest in maintaining the exemption outweighed the public interest in disclosing it.

The complainant wrote to the Commissioner on 16 August 2007 and asked him to consider whether the Department had correctly withheld the requested information.

On 16 July 2008 the Commissioner wrote to the Department to begin his investigation into the handling of the complainant's request. The Commissioner asked the Department to provide a copy of the complainant's request for information (the complainant had not retained a copy having submitted his request via the Department's online request form), a copy of the information withheld from the complainant and a detailed explanation as to why the Department believed the information should not be disclosed.

The Department responded the following day and provided a copy of the complainant's request for information. However, it queried whether this was the correct request, as the Department stated it had received and responded to a number of communications from the complainant during 2006.

The Commissioner contacted the complainant to confirm whether the request provided by the Department was the request he wished the Commissioner to investigate. The

Commissioner contacted the Department on 29 July 2008 and confirmed that it had identified the correct request. The Commissioner asked the Department to respond in full to his letter of 16 July 2008 by 15 August 2008.

On 14 August 2008 the Department wrote to the Commissioner by email and requested an extension to the deadline for responding until 29 August 2008. The Department claimed to attach a number of documents to its email of 14 August 2008, however the Commissioner did not receive the attachments.

The Commissioner contacted the Department by telephone on 19 August 2008. He highlighted to the Department that it had not provided any attachments with its latest email communication. The Department asked if it could provide these attachments along with its response to the Commissioner's letter of 16 July 2008. The Commissioner agreed to this and agreed to extend the deadline for a response to his letter of 16 July 2008 to 29 August 2008, as requested. The Commissioner confirmed the details of this conversation by an email on the same day.

The Department contacted the Commissioner by telephone on 27 August 2008 and requested a further extension to the deadline for responding to his letter of 16 July 2008. The Commissioner asked the Department to respond by 5pm on 5 September 2008. Again, the Commissioner confirmed details of this telephone conversation in an email later the same day.

On 5 September 2008 the Department telephoned the Commissioner. It explained that it would be able to provide some of the information requested in the Commissioner's letter of 16 July 2008, namely redacted and unredacted copies of the information supplied to the complainant, however would not be able to provide detailed explanations as to why the information was to be withheld until the week beginning 15 September 2008.

The Commissioner contacted the Department by email later the same day. He confirmed that, unless he received the information requested by 22 September 2008, he would serve an Information Notice under section 51 of the Act to require the information he had requested to be provided.

On 5 September 2008, at 7pm, the Department contacted the Commissioner in response to his letter of 16 July 2008. The Department explained that some of the information requested would arrive by special delivery before midday on 8 September 2008. The Department also sought to introduce section 42 as a reason for withholding the requested information from the complainant.

After a short delay, in which he clarified the scope of the request with the complainant, the Commissioner contacted the Department again, on 12 September 2008. The Commissioner asked the Department to provide:

- i. an explanation of what information was contained in some of the documents it had provided to him;
- ii. further copies of documents the Department believed it had provided to the Commissioner, however which he could not locate;
- iii. an explanation of the Department's interpretation of the scope of the complainant's request;

- iv. an explanation regarding the Department's application of the section 42 exemption; and
- v. an explanation of the public interest factors taken into account when deciding that, in all the circumstances of the case, the public interest in maintaining the section 35(1)(a) exemption outweighed the public interest in disclosure.

The Commissioner asked the Department to respond by 13 October 2008.

The Department responded on 14 October 2008. The Department provided an explanation to the points raised at (i), (iii), (iv) and (v) above, however declined to provide copies of the information requested at (ii) above, stating that this information had already been provided.

On 10 November 2008 the Commissioner wrote to the complainant again. He explained that the response provided to point (i) above was not sufficiently detailed for his purposes and that in relation to point (ii) above, he had re-examined the bundle of documents the Department had provided and could not locate the relevant documents. He asked the Department to provide these to him. The Commissioner asked the Department to respond by 25 November 2008.

The Department attempted to contact the Commissioner on 21 November 2008 however did so using an incorrect email address.

On 25 November the Department wrote to the Commissioner. It sought to provide an electronic copy of a document, however the Commissioner could not open the file.

The Commissioner contacted the Department on 5 December 2008. He explained that the Department had provided some information which he could not access and had failed to provide additional information. It became apparent that the Department had been attempting to contact the Commissioner using an invalid email address. The Department undertook to provide the information again.

Having not received the information requested or an update, the Commissioner telephoned the Department on 11 December 2008. The Department again attempted to resend the information, by email on 15 December 2008, however again the attachments could not be opened. The Commissioner asked the Department to print the requested information and send it in hard copy. The Department did so; the information was received by the Commissioner on 17 December 2008.

The Commissioner reviewed the information provided and wrote to the Department on 9 February 2009 with a number of further questions, regarding the application of exemptions to the withheld information, the public interest test, and the concern that it appeared to the Commissioner that not all of the information relevant to the request had been identified and provided to him. The Commissioner asked the Department to respond to his queries and to ensure that all relevant information had been provided for his consideration. The Commissioner asked the Department to respond by 10 March 2009.

The Department wrote to the Commissioner on 10 March 2009. It provided a response to some of the queries raised in his letter of 9 February 2009, however stated that it

would not be able to provide a definitive response regarding the information it held which fell within the scope of the request, until 8 April 2009.

The Commissioner telephoned the Department on 12 March 2009. He explained that the Department's written response of 10 March 2009 was not sufficiently detailed for his purposes. Further, he explained that he could not agree to extend the deadline for a response on the 'information held' point until 8 April 2009. The Commissioner agreed to allow the Department until 27 March 2009 to provide a full response to all his outstanding queries.

On 27 March 2009 the Department contacted the Commissioner by email. It provided further detail in response to the Commissioner's letter of 9 February 2009, however did not provide all of the information requested. The Commissioner acknowledged receipt of this letter by telephone on 31 March 2009.

Information Required

In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the Department of Health shall, within 30 days of the date of this Notice, furnish the Commissioner with the information specified below, namely:

1. Confirmation of which exemption(s) the Department is relying upon to withhold document 70¹.
2. Confirmation of which exemption(s) the Department is relying upon to withhold document 95².
3. The Department has stated in its letters to the Commissioner of 10 and 27 March 2009 that some of the information contained within document 61³ "touches on the operation of the Ministerial private office and communications between Ministers". If the Department wishes to rely on any exemption other than that provided by section 35(1)(a), in respect of document 61, it should explain to the Commissioner which exemption it is relying upon and its decision in relation to the public interest test, where relevant. Alternatively, the Department should confirm that it only wishes to rely on section 35(1)(a) in respect of document 61.
4. In relation to its application of the public interest test regarding section 35(1)(a), the Department should explain how the decision-making process may be hindered by disclosure of the requested information, and which specific parts of the withheld information are likely to bring this result about.

¹ Communication from [redacted] to [redacted] dated 7 February 2005

² Communication from [redacted] to [redacted] dated 1 October 2003

³ Communication between [redacted] and [redacted] dated 26 March 2004

5. In relation to its application of the public interest test regarding section 35(1)(a), the Department should explain the specific parts of the withheld information which, if they had been disclosed at the time of the request, could have caused Ministers and officials to disregard policy options.
6. The Department has ~~claimed~~ section 42(1) in respect of documents 88⁴ and 96⁵. It should therefore explain which party is the client and which is the professional legal adviser.
7. In relation to the information contained within document 80⁶, the Department should clarify whether this refers to the issue of whether doctors should be required to have insurance as a condition of their practicing in the UK, or whether it relates to other healthcare professionals or other matters.
8. The Department should explain to the Commissioner why it considers section 42(1) to apply to the information contained in document 80. The Department should clarify:
 - a. which party is the client and which is the professional legal adviser for the purposes of this communication; and
 - b. what advice is being requested or provided.
9. The Department should explain to the Commissioner the public interest factors it has taken into account when deciding that the information exempt under section 42(1) should be withheld from the complainant. The Department should relate these arguments to the actual information in question, where possible.
10. The Department has identified further documents relevant to the complainant's request, and provided details of these in a spreadsheet sent to the Commissioner on 27 March 2009. However, it did not provide the documents themselves. The Department should:
 - a. provide the Commissioner with hard copies of all the documents set out on the spreadsheet;
 - b. label clearly which document relates to which entry on the spreadsheet;
 - c. set out clearly on the documents which parts are considered to fall outside the scope of the complainant's request;

⁴ Correspondence between [REDACTED] dated 17 August 2006

⁵ Correspondence between [REDACTED] dated 30 September 2003

⁶ Correspondence between [REDACTED] dated July 2005 (marked 'draft')

- d. set out clearly on the documents which parts are considered to be exempt from disclosure, and specify which exemptions are considered to be applicable.
 - e. explain to the Commissioner why the exemptions are thought to apply to the information;
 - f. set out the public interest considerations it has taken into account when determining that the public interest in maintaining the exemptions outweighs the public interest in disclosing the information, where qualified exemptions have been applied; and
 - g. confirm to the Commissioner the date, to fall within ten working days of the date of compliance with this notice, by which it intends to provide to the complainant any information which may be released.
11. The Department should explain to the Commissioner how it may be satisfied that it has now identified all of the information relevant to the complainant's request, for example by explaining how the information requested is held, what searches the Department has carried out and whether any of the information requested has been destroyed or deleted.
12. In the case of information that has been destroyed or deleted, the Department should clarify when the information was destroyed or deleted, and whether this destruction or deletion was conducted in line with the Department's records management policy (providing a copy of the relevant part of the records management policy where this is relied upon). Alternatively the Department should confirm that no information relevant to the complainant's request has been destroyed or deleted.
13. The Department should raise with the Commissioner any further arguments it wishes to rely upon in respect of the requested information, in response to this notice.

Failure to Comply

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

Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal.
Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@tribunals.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Dated the 15th day of April 2009

Signed: 

Gerrard Tracey
Assistant Commissioner

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

Freedom of Information Act 2000 (Section 51)

Information Notice

9 February 2009

Public Authority: British Broadcasting Corporation
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

-
1. The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the "complainant") to the BBC on 8 August 2007 has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

2. The complainant has advised that on 8 May 2007 he made the following request for information to the British Broadcasting Corporation (BBC):

"Please would you provide me with details of;

- 1. Salary paid to Mr Brendan Foster with respect to commentating or other duties*
- 2. Financial details of transactions between Nova International and the BBC (in both directions)*
- 3. Guidance given to presenters about conflict of interests*
- 4. Advertising revenue paid to the announcement of athletics events*
- 5. If there is no advertising revenue, the criteria by which events other than those by Nova International may be accepted and broadcast. "*

3. The BBC responded on 16 August 2007 explaining that the requested information is not covered by the Act. The BBC stated that the request falls outside of the scope of the Act because the BBC is covered by the Act only in respect of information held for purposes other than those of journalism, art or literature. The BBC stated that it was therefore not obliged to supply information held for the purposes of creating its output or information that supports and is closely associated with these creative activities. The BBC did however provide the information requested in part 3 and explained that the information requested in parts 4 and 5 is not held.
4. The complainant wrote to the Commissioner on 17 August 2007 asking the Commissioner to investigate the BBC's handling of this information request.
5. The Commissioner wrote to the BBC on 23 July 2008 asking for further arguments from the BBC to support the application of the derogation; for details of which exemptions contained in Part II of the Act the BBC would rely on to withhold the requested information should the Commissioner conclude that the derogation did not apply; and for a copy of the withheld information.
6. Having received no response the Commissioner wrote to the BBC again on 19 January 2009 requesting a response within 10 working days. To date the Commissioner has not received a response from the BBC.

Information Required

7. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the BBC shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:

- A copy of the withheld information,
- Detailed arguments as to why the BBC considers the information requested is covered by the derogation to include: for what reasons did the BBC hold the information at the time of the request; for what reasons is the information now held and who the primary users of the information are.
- An explanation of which exemptions the BBC would seek to rely on to withhold the information should the Commissioner conclude that the derogation does not apply.

Failure to Comply

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

Right of Appeal

9. There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@tribunals.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Dated the 9th day of February 2009

Signed: 

Nicole Duncan
Head of FOI Complaints

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

Freedom of Information Act 2000 (Section 51)

Information Notice

Date: 21 September 2009

Public Authority: British Broadcasting Association (BBC)
Address: Media Centre
Media Village
201 Wood Lane
London
W12 7TQ

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Section 51(8) states that "in this section "information" includes unrecorded information.

Application under section 50

The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the complainant) of [REDACTED] to the BBC on 10 July 2007, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

The complainant wrote to the BBC on 10 July 2007 for information relating to the drama series "Our Friends in the North". He requested the following information under the Act:

1. Details of any kind of contact between the BBC and any political party regarding the tone or content of the programme. The paperwork could predate transmission or could have been generated during and or post transmission;
2. Any documentation which details the attitude of the BBC or BBC figures to the storyline and or the dialogue and or the characters etc. This information could predate transmission or could have been during and or generated post transmission;
3. Contact between the BBC and any member of the Conservative Party and or Conservative Government about the programme. Again this information could predate transmission or could have been generated during or post transmission;
4. Details of any BBC concerns about issues of libel and bias contained in the programme. Again this information could predate transmission or could have been generated during and or post transmission;
5. Details of any changes suggested and or made by the BBC and or any other outside body and or individuals not connected with the show;
6. Details of the Corporation's earlier attempts to adopt this landmark drama; and
7. Any correspondence between the BBC and Peter Flannery. This correspondence could predate transmission or could have been generated during or post transmission.

On 24 July 2007 the BBC provided a response in which he responded to numbers 1 to 7 of the request as follows:

1. It held no information in respect of this request.
2. It provided copies of two documents.
3. It held no information in respect of this request.
4. It held 18 relevant documents, but applied the exemption contained at section 42 of the Act which relates to Legal Profession Privilege in order to withhold the information and that, in all circumstances, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
5. It provided some information and confirmed that the relevant documents did not contain any more relevant information.
6. It could not trace any relevant documentation.
7. It held three relevant documents, but applied the exemption contained at Section 40(2) of the Act which relates to third party personal data. The BBC stated that the files dealt with contractual negotiations, and there was no expectation that these would be made available to the public.

On 28 July 2007 the complainant requested an internal review of the BBC's decision in respect of points 3 and 4 of the request only. On 14 August 2007, the BBC wrote to the complainant with the details of the result of the internal review in relation to points 3 and 4 of the request. It confirmed that the BBC did not hold any information in respect of point 3. In relation to point 4, the BBC upheld its application of the exemption contained at section 42 of the Act.

On 1 November 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the refusal to disclose the information requested at point 4 of the request was in accordance with the Act.

In order to investigate this complaint the Commissioner wrote to the public authority on 23 July 2008 and then subsequently on 17 July 2009 and 21 August 2009. The Commissioner asked the BBC to provide a copy of the withheld information along with its full and complete arguments to support its application of the exemption contained at section 42 of the Act. He also requested full clarification in respect of the BBC's application of the public interest test,

The Commissioner did not receive any response from the BBC.

Having considered the above, and in order to progress the case, the Commissioner believes that it is appropriate for him to issue an Information Notice in regard to this case.

Information Required

In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the BBC shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:

1. A copy of the 18 documents that the BBC has stated are relevant to point 4 of the request and which were withheld under the exemption contained at section 42 of the Act.
2. The BBC's arguments to support its application of the exemption contained at section 42 of the Act, and its application of the public interest test, in relation to point 4 of the request.

Failure to Comply

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

Reference: FS50182743



Right of Appeal

There is a right of appeal against this Information Notice to the Information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@tribunals.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Dated the 21st day of September 2009

Signed: 

Lisa Adshead
Senior FOI Policy Manager

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

Freedom of Information Act 2000 (Section 51)

Information Notice

Date: 3 February 2010

Public Authority: British Broadcasting Corporation
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –
(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

The Commissioner has received an application under section 50 for a decision whether a request for information made by [REDACTED] (the complainant) to the BBC on 4 September 2007 has been dealt with in accordance with the requirements of Part I of the Act.

Nature of Complaint

1. The complainant has advised that on 4 September 2007 he made the following request for information to the British Broadcasting Corporation (BBC):

"I am writing to make a request for information under the Freedom of Information Act.

I understand that the BBC is subject to inspections by the Office of the Surveillance Commissioners. With respect to the latest inspection report, I would like to request a copy of:

- 1. The OSC's covering letter,*
- 2. The reports conclusions,*
- 3. The reports recommendations,*
- 4. If possible, a full copy of the report, and*
- 5. Your response to the OSC.*

My address is [REDACTED] though I would prefer to correspond by email..."

2. The BBC responded on 5 October 2007. In relation to questions 1 to 4, the BBC provided a redacted copy of the Office of Surveillance Commissioners ("OSC") report which included conclusions and recommendations as well as the OSC's covering letter. The BBC explained that some parts of the report had been redacted as they are exempt under subsections 31 (1) (a), (b) (d) and (g) of the Act and that the public interest in maintaining the exemptions outweighed the public interest in disclosure of the information. In relation to question 5, the BBC's provided a redacted copy of the document and explained that some parts of the response contained information that was subject to legal privilege and was therefore exempt from disclosure under section 42 of the Act and that the public interest in maintaining the exemption outweighed the public interest in disclosure of the information.
3. On 6 October 2007, the complainant requested an internal review on the following grounds:
 - The BBC's application of the public interest test
 - Inconsistencies in the BBC's application of exemptions
 - The BBC's redaction of officials names under section 40 of the Act
 - The BBC's reliance on section 31 of the Act
 - The BBC's reliance on section 42 of the Act, and
 - A review to establish the information had not been redacted on the basis it would cause embarrassment to officials.
4. The BBC completed its internal review and communicated the findings to the complainant on 31 October 2007. The internal review focused on whether redactions made under sections 31, 40 and 42 were properly made. The internal review upheld the BBC's application of sections 31 and 42 of the Act. In relation to section 40, the BBC released some additional names but continued to apply the exemption to the remaining three persons named. The BBC addressed the complainant's concerns regarding the embarrassment of officials as well as touching on the public interest considerations.
5. The complainant wrote to the Commissioner on 4 January 2008 asking him to investigate the BBC's handling of his information request.

6. On 24 January 2008 the Commissioner wrote to the BBC to advise that a complaint had been received and to request a copy of the withheld information specifically identifying which exemption applied to each piece of information.
7. On 5 August 2009 the Commissioner wrote a further letter to the BBC requesting arguments to support the BBC's application of sections 31 and 42 of the Act to the withheld information. He also requested further details of the public interest test considered both for and against maintaining the exemptions. The Commissioner again requested a copy of the withheld information.
8. On 8 September 2009 the Commissioner emailed the BBC to advise that the Commissioner had not received a copy of the requested information, nor had any response been received regarding questions asked in relation to the exemptions cited. The email stated that unless a response was received within 10 working days an Information Notice would be issued to the BBC's Director General.

Information Required

9. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act, he requires that the BBC shall, within 30 days of the date of this Notice, furnish the Commissioner with a copy of the information specified below, namely:
 - A complete copy of the withheld information, namely:
 - the OSC's covering letter to the BBC
 - a copy of the OSC report including the reports conclusions and recommendations, and
 - a copy of the BBC response to the OSC, and
 - A detailed argument in relation to the each of the exemptions claimed by the BBC to withhold the information to include the application of the public interest test.

Failure to Comply

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

Reference: FS50188663



Right of Appeal

11. There is a right of appeal against this Information 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

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

Dated the 3rd day of February 2010

Signed:

A black rectangular box redacting the signature of Steve Wood.

Steve Wood
Assistant Commissioner

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