

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 18 March 2024

**Public Authority:** London Borough of Lambeth  
**Address:** Lambeth Town Hall  
Brixton  
London  
SW21 RW10

**Decision (including any steps ordered)**

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1. The complainant has requested information concerning correspondence with Prince William on the subject of homelessness and housing from the London Borough of Lambeth (the "Council"). The Council ultimately refused to comply with the request as it claimed that to confirm or deny whether any information was held would exceed the cost limit at section 12(2) of FOIA.
2. The Commissioner's decision is that some of the requested information, if held, would be environmental as defined by the EIR. There is no equivalent 'neither confirm nor deny' provision within the EIR regulations, so the Commissioner has determined that the Council was entitled to refuse those parts of the request by virtue of the exception in Regulation 12(4)(b) (Manifestly unreasonable) of the EIR. For the remainder of the request, the Council was entitled to rely on section 12(2) of FOIA.
3. The Commissioner also finds that the Council complied with its obligations under Regulation 9 of the EIR and section 16 of FOIA to offer advice and assistance. No steps are required.

## Background

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4. There is an article on the Council's website<sup>1</sup> which refers to a: "New partnership with Prince William and the Royal Foundation to end homelessness".
5. The article also provides a link to the "Homewards Partnership"<sup>2</sup> which is referred to in the information request.

## Request and response

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6. On 12 July 2023, the complainant wrote to the Council and requested the following information:

"I would like to request the following information via the Environmental Information Regulations (EIRs).

...Please note that the reference to Prince William in the questions below should be taken to mean the Prince himself (irrespective of the royal and or aristocratic and or constitutional title (s) used by him). It should also include anyone able to receive and or compose and or send correspondence on behalf of the Prince.

Please note that the reference to the council in the questions below should be restricted to the Council Leader and his or her office, the Chief Executive [or equivalent] and his or her office, the council's press and public relations office, the council's legal department, the council's housing department, any council employees who work directly with the homeless and or the issue of homelessness and or any council employees who are known to have been in contact with either the Prince (and or his team) and or The Royal Foundation of The Prince and Princess of Wales and or any employee and representative of the prince's Homewards initiative.

Please note that the reference to correspondence and communications in the questions below should include all traditional forms of correspondence such as letters, faxes and memos; all

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<sup>1</sup> <https://www.lambeth.gov.uk/your-community/projects-priorities/lambeth-new-partnership-with-prince-william-royal-foundation-end-homelessness>

<sup>2</sup> <https://homewards.org.uk/>

emails irrespective of whether they were sent and or received via official or private accounts; all Gmail messages; all telephone text messages and all messages sent through encrypted messaging services including but not limited to WhatsApp.

Please provide copies of actual correspondence and communication and not just excerpts from that correspondence and communication. In the case of actual letters can you provide a copy which includes the letter head, any other design features, and the actual signatories. If you feel the need to redact information, please redact it where it appears in the correspondence and communication. That way I will be able to judge the extent and location of any redaction.

Please note that I am only interested in information generated between 1 February 2023 to the present day...

1. During the aforementioned period has Prince William (and or anyone able to correspond and communicate on his behalf) written to and or communicated with the council. Please note that I am only interested in that correspondence and communications which mentions and or in any way relates to any and or all of the issues and topics listed below. If the answer is yes, can you, please provide copies of this correspondence and communication.
  - (a) Homelessness and or a shortage of homes within the council's geographical area and or the issue of homelessness and or a shortage of homes anywhere else in the UK.
  - (b) The problems faced by rough sleepers in the council's own geographical area and or in any other parts of the UK. This will include but will not be limited to the health and safety of those who are sleeping rough and have no proper protection from the elements.
  - (c) The Prince's new Homewards initiative.
  - (d) The Royal Foundation of the Prince and Princess of Wales.
  - (e) The shortage of housing whether in the council's own geographical area and or in any other part of the UK.
  - (f) The need to build and or to secure and or to provide more homes in the council's own geographical area and or in any other part of the UK.

- (g) The use of vacant land sites within the council's own geographical area and or in any other parts of the country to provide new homes and or new facilities for those regarded as being homeless or those in urgent need of new houses.
  - (h) The need to build more housing and or facilities for the homeless on either brown field or green field sites within the council's area.
  - (i) The use of existing properties that are either empty and or derelict to provide new homes and or new services for the
  - (j) existing housing stock within the council's area [sic].
2. During the aforementioned period has the council written to and or communicated with Prince William (and or anybody able to correspond and or communicate on his behalf) about any of the issues outlined in question one (a to j). If the answer is yes, can you, please provide copies of this correspondence and communication.
  3. During the aforementioned period did either the Royal Foundation of the Prince and Princess of Wales and or any employee and representative of the Prince's Homewards initiative write to and or communicate with the council. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any and or all of the topics and issues listed in question one (a to j). If the answer is yes, can you, please provide a copy of this correspondence and communication.
  4. During the aforementioned period did the council write to and or communicate with the Royal Foundation of the Prince and Princess of Wales and or any employee and or representative of the prince's Homewards initiative. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any and or all of the topics and issues listed in question one (a to j). If the answer is yes, can you, please provide a copy of this correspondence and communication".
7. On 18 August 2023, the Council responded. It advised the complainant that it was handling his request under FOIA as it did not relate to environmental information. It would neither confirm nor deny ("NCND") holding any information relying on s37(2) by virtue of s37(1) (aa), (ac) and / or (ad) of FOIA.

8. The complainant requested an internal review on 18 August 2023. He said:

"You will note that my original request for information was a request for information via the Environmental Information Regulations (EIRs).

I am therefore unhappy that the council has chosen to treat it as a request made via the FOIA.

You will be aware that the correspondence and communications of his HRH Prince William are not automatically exempt from disclosure if they are about the environment or relate to issues which have implications for the environment.

I believe the issues at the heart of my request have implications for the environment.

The request should therefore have been treated as a request for information via the EIRs".

9. The Council provided an internal review on 22 September 2023 in which it revised its position. It said: "We consider that aspects of your request will fall within the subsections of the EIR", without being more specific as to which aspects. In this respect it said that it would be manifestly unreasonable to comply with the request in accordance with Regulation 12(4)(b) of the EIR.
10. During the Commissioner's investigation, the Council initially changed its position and cited reliance on section 12(1) of FOIA to the request in its entirety. This was subsequently revised to section 12(2) of FOIA, because the Council was unable to confirm or deny whether any relevant information was held within the cost threshold.
11. The complainant has not been advised regarding this revised position. However, it is clear from his correspondence that he does not accept that FOIA is the appropriate access regime so the Commissioner does not consider that he is disadvantaged by how the complaint has been handled below.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 25 September 2023 to complain about the way his request for information had been handled. His grounds were as follows:

"... my request for information concerned the local authority's contacts and communications with HRH Prince William about the issues of homelessness, the shortage of homes within the council's own area and the UK and the need to build more homes within the council's geographical area and the country at large.

I am unhappy with both the council's failure to provide the 'environmental information' I believe it does hold and with its handling of the request.

In its original reply to my request the council chose not to process the request via the EIRs. I do not accept its claim that the relevant information is not 'environmental information.'

I am also concerned by the council's response to my request for an internal review. I note that I am seeking the council's correspondence and communications with a select group of individuals and organisations across a narrow period and on a particular set of issues. I do not accept the authority's claim that the request is manifestly unreasonable. Moreover, I note that the council has not provided any calculations to back up its case that processing this request would be too costly and time consuming.

I would be grateful if the Commissioner could examine the relevant information held taking into account all of the following.

- (i) The presumption in favour of disclosure at the heart of the EIRs.
- (ii) The fact that the contacts and communications of the Prince of Wales are not automatically exempt from disclosure when they relate to the environment or environmental issues.
- (iii) Previous ICO and tribunal rulings relating to the advocacy work of senior members of the Royal Family".

13. The Commissioner will consider these matters below.

### **Reasons for decision**

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14. The complainant has insisted that his request is dealt with under the EIR access regime. It is not for a complainant to stipulate which access regime should be used, however, it is noted that at least some of the information requested would likely be environmental in nature were it held.

**Is the requested information environmental?**

15. The Commissioner understands the complainant's view that his request is seeking information which is generally related to homelessness and housing problems. In his grounds of complaint the complainant clarifies above that he is seeking information about "**the shortage of homes within the council's own area and the UK and the need to build more homes**". However, the original request is much broader. It stipulates "**correspondence and communications which mentions and or in any way relates to any and or all of the issues and topics listed**", and some of parts of it do not necessarily appear to be environmental in nature, such as parts (c) and (d).

16. In responding to the Commissioner's enquiries the Council advised:

"Although the review stated that some information also fell within the EIR regime, we have now further reviewed the matter... We have discussed the definition of Environmental Information with the department which holds the information.

The information held on this subject matter is about partnership working across the voluntary, charitable and statutory sector to bring together as many people working within the homelessness arena as we can. This has been typically arranging forums and workshops to talk about matters such as effective working with people with Lived Experience or to introduce the various partners to each other to ensure a joined up approach.

Accordingly, it is now considered that the held information does not fall within the definition of Environmental Information. We would therefore like our review / response to be considered on the basis that the information is FOI not EIR".

17. The Council has provided the Commissioner with a sample of 22 emails which it had recovered whilst undertaking searches. The Commissioner has read these and agrees that they are as described in the paragraph above. The Commissioner does not consider **any** of these sample emails to be environmental in nature.

18. However, the Commissioner accepts that there is a possibility that there may be further information which could fall within the remit of the EIR.

19. Regulation 2(1) of the EIR defines environmental information as being information on:

"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites

including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)".

20. In the case under consideration here, at least some of the requested information, if held, would relate to issues that would constitute a 'measure' as defined in (c) above, likely to affect the elements of the environment as defined by Regulation 2(1)(c), eg a shortage of housing and possible related building proposals are relevant activities that may affect the elements and factors specified in regulation 2(1)(c). The Commissioner is therefore satisfied that some of the information requested, if held, would fall within the definition of environmental information under Regulation 2(1)(c) of the EIR.

21. Therefore, the Commissioner considers that the Council should have handled at least some of the request under the EIR rather than all of it under FOIA. However, he has adopted a pragmatic approach here to avoid any further delays in this case. Rather than ordering the Council to provide a response under the EIR, the Commissioner has considered both its earlier EIR arguments, and later FOIA arguments, and the explanations offered and applied them to the applicable EIR Regulation. There is no direct equivalent of section 12 in the EIR. However, the EIR



do allow a public authority to refuse a request that is 'manifestly unreasonable'.

22. As some of the requested information, if held, would be environmental, the Commissioner's decision is that the Council should have handled these parts of the request under the EIR. Therefore, the Commissioner has gone on to consider whether it was entitled to rely on Regulation 12(4)(b) of the EIR to refuse to provide the requested information, as was previously cited at internal review stage.

### **Regulation 12(4)(b) – manifestly unreasonable**

23. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. In this case, the Commissioner is considering regulation 12(4)(b) on the grounds that to comply with the request would impose a significant and disproportionate burden on its resources, in terms of time and cost.
24. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. The limit for local authorities, such as the Council, is £450, calculated at £25 per hour. This applies a time limit of 18 hours.
25. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
- determining whether the information is held;
  - locating the information, or a document containing it; • retrieving the information, or a document containing it and;
  - extracting the information from a document containing it.
26. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
27. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend, as is the case here. However, the Fees Regulations are not the determining factor in assessing whether the exception applies. The Council must then balance the cost calculated to respond to the request against the public value of the

information which would be disclosed before concluding whether the exception is applicable.

28. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
29. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence"<sup>3</sup>. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the requests.
30. In its internal review (which was considered under the EIR), the Council said:

**"Scope and Extent of the Request:**

The volume of individuals across the organisation who may hold information in scope is significant, alongside the number of different teams across satellite sites caught by the breadth of this request. Additionally, we note that Q2, Q3 and Q4 appear to be duplicates of Q1 (c) and (d). The time and resources required to meet this request would likely affect our ability to fulfil other essential tasks and respond to other requests and service provisions within reasonable timeframes.

**Impact on Normal Operations:**

The magnitude of this request could disrupt our regular operations and hamper the efficient delivery of public services to residents and service users in the borough. It is essential to maintain a balance between transparency and the smooth functioning and delivery of our public duties".

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<sup>3</sup><http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

31. In later correspondence with the Commissioner, after it had reverted to consideration of FOIA, the Council explained:

"Our IT department have now carried out the server searches...to ascertain the number of emails that may be in scope. The search key words used were "Royal Foundation" and "Homewards", and the date span was 1 February 2023 – 31 July 2023.

The results were as follows:

All staff mailbox search: total emails returned: 130,622

We then asked for the search to be narrowed further to include only the emails of two key officers – our Associate Director Housing and Adult Social Care Commissioning and our Head of Commissioning (Supported Housing), in an attempt to reduce the prospective emails in scope. This returned 5029 emails. We would therefore seek to engage s12 FOIA as we calculate that to review each email at 5 minutes per email would exceed the 18-hour limits set out at s12".

32. Having viewed the sample emails which were provided, the Commissioner does not agree that it would take five minutes to consider each one in order to ascertain whether it held relevant information which would fall under the remit of the EIR. However, were this timeline reduced to just one minute per email, which the Commissioner determines to be reasonable, this would still take 5029 minutes, ie nearly 84 hours, on top of the time which has already been expended on searching for any material.
33. It is further noted that this only relates to two employees whereas the request seeks information from a larger number of staff. The Council has advised the Commissioner:

"I would like to add that in considering s12(2) FOIA, we have checked staffing levels for officers who may hold information in scope. In our Housing Dept there are 500 staff members, and in our Legal Dept 100 staff member. There may be other staff in other departments that hold information, increasing the cost/time that would be needed in order to seek to comply with the request".

34. Whilst the complainant believes that he is requesting: "the council's correspondence and communications with a select group of individuals and organisations across a narrow period and on a particular set of issues", in reality the number of staff that he has included exceeds 600. It is therefore clear to the Commissioner that it would involve many more hours' work to locate any relevant information that may be held in the suggested employees' accounts.

### **The Commissioner's conclusion**

35. The Commissioner has considered the Council's cost estimate and he regards it as clear, logical and convincing. He accepts that to confirm or deny whether any environmental information is held, even on the narrowed estimate set out above, it would be necessary to read through all of the 5029 emails located at an absolute minimum, and that many more would also fall within the scope of the request based on the wide range of staff the complainant has suggested that the Council takes into account. This is far greater than the 18 hour upper limit for FOIA requests, set out in the Fees Regulations.
36. Taking all the above into account, the Commissioner is satisfied that the Council has shown that compliance with the request would involve at least 84 hours' work. This is an expense which the Council could not be expected to absorb without adversely affecting its service provision in other areas. Furthermore, the Commissioner finds that the burden would be disproportionately excessive. He has not been presented with any arguments to justify the loss of service that would follow were the Council required to undertake the work, with no clear knowledge that any relevant information will actually be held once completed.
37. The Commissioner's decision is therefore that it would be manifestly unreasonable, on the grounds of cost and the burden that would be placed on its resources, for the Council to comply with the request.

### **Public interest test**

38. All the exceptions created under regulation 12 are subject to the public interest test. The public interest test means that even where the requested information is covered by an exception, a public authority can only rely on that exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure. Therefore, technically, regulation 12(4)(c) is subject to the public interest.
39. The Commissioner acknowledges that the EIR do contain a presumption in favour of disclosure. However, it is also necessary to consider whether any burden which would be suffered by the Council (and its consequences) is proportionate to any benefit that would flow from disclosure, or as is the case here, from confirmation or denial that the requested information is held.
40. As its application can have no meaningful application where to confirm or deny whether the requested information is even held would exceed the cost of compliance, the Commissioner has not further considered the public interest test. However, he recognises that the balancing exercise

undertaken in this case to determine whether the burden of complying with this request is proportionate to the value of the information requested, does consider aspects which have some relevance to the public interest.

41. The Commissioner will now go on to consider any parts of the request that may fall within the FOIA regime rather than the EIR. He considers that such areas of the request might include the subject matter covered by parts (b), (c) and (d), which are not obviously environmental in nature.

### **Aggregation of requests**

42. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case, this means that there are several requests to be considered. However, where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.

43. In the Commissioner's guidance<sup>4</sup> on exceeding the cost limits, he explains that:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested".

44. The Fees Regulations wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

need to be closely linked to be aggregated, only that the requests can be linked.

45. Although the Council did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there is an overarching theme. This is because the individual questions all refer to correspondence between Prince William and the Council on the subject of homelessness and housing. Therefore, the Council was entitled to aggregate the costs of dealing with each question.

## **Section 12 – cost of compliance**

46. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
47. The appropriate limit is set at £450 for the Council by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
48. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours, and specify the tasks that can be taken into account when forming a cost estimate as follows:
- (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
49. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the Council was reasonable. If it was, then section 12(2) was engaged and the Council was not obliged to confirm or deny whether the requested information was held.
50. Based on the same rationale used in his determination of Regulation 12(4)(b) above, the Commissioner considers the estimate given to be a reasonable one. The Commissioner therefore concludes that section 12(2) is engaged and the Council was not obliged to confirm or deny holding any of the information not caught within the EIRs.

## **Regulation 9 / Section 16(1) - advice and assistance**

51. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
52. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request, so far as it would be reasonable to expect it to do so.
53. In its internal review, the Council provided the complainant with the following information:

"We can provide the following information in relation to Q1(B) of your request:

Homelessness and Rough Sleeping Strategy and Action Plan  
([lambeth.gov.uk](http://lambeth.gov.uk))<sup>5</sup>

[hr-housing-strategy-2017-20.pdf](http://lambeth.gov.uk) ([lambeth.gov.uk](http://lambeth.gov.uk))<sup>6</sup> - please be advised that work to refresh the Housing Strategy is scheduled to commence later this year".

54. The Council has not suggested a way in which the complainant might refine his request, however, this is not always practicable. As the findings above suggest, even searching just two email accounts is manifestly unreasonable and this only covers a small number of the staff suggested by the complainant. Indeed, were he to only suggest one of these parties, it is likely that this search in isolation may also be manifestly unreasonable. Accordingly, the Commissioner can see no obvious way in which the Council could make a suggestion as to how the request may be suitably refined, so he finds no breach.

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<sup>5</sup> <https://www.lambeth.gov.uk/sites/default/files/homelessness-and-rough-sleeping-strategy-december-2019.pdf>

<sup>6</sup> <https://www.lambeth.gov.uk/sites/default/files/hr-housing-strategy-2017-20.pdf>

## **Right of appeal**

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55. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

56. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**