

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 October 2024

**Public Authority:** Foreign, Commonwealth & Development Office

**Address:** King Charles Street  
London  
SW1A 2AH

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to Foreign, Commonwealth & Development Office (FCDO) seeking correspondence between it and Linacre College, Oxford regarding the proposed donation from Nguyen Thi Phuong Thao to the college. The FCDO disclosed information in response to the request but redacted parts of it on the basis of sections 27(1)(a), (c) and (d) (international relations), 40(2) (personal data), 41(1) (information provided in confidence) and 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that the redacted information is exempt from disclosure on the basis of the exemptions cited by the FCDO.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. The complainant submitted the following request to the FCDO on 21 November 2023:

"Please provide a copy of correspondence between the department and Linacre college in relation to the proposed donation from Nguyen Thi Phuong Thao to the college from 1st January 2021 to date.

Please provide a copy of any advice given to Linacre College by the department in relation to the proposed donation from Nguyen Thi Phuong Thao to the college from 1st January 2021 to date.”

5. The FCDO contacted him on 20 December 2023 and confirmed that it held information falling within the scope of his request but it considered this to be exempt from disclosure on the basis of sections 27 (international relations) and 43 (commercial interests) of FOIA and that it needed additional time to consider the balance of the public interest. The FCDO issued a similar letter further extending the time it needed to consider the public interest on 23 January 2024.
6. The FCDO provided a substantive response to the request on 9 February 2024. It disclosed a digest of information to him but explained that parts of this had been redacted on the basis of sections 27(1)(a), (c) and (d), 40(2) (personal data), 41(1) (information provided in confidence) and 43(2) of FOIA. In respect of the qualified exemptions, it concluded that the public interest favoured withholding the information to which these exemptions had been applied.
7. The complainant contacted the FCDO on 13 February 2024 and challenged the application of the various exemptions.
8. The FCDO informed him of the outcome of the internal review on 12 April 2024. The review upheld the application of the exemptions cited in the refusal notice.

## Scope of the case

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9. The complainant contacted the Commissioner on 15 April 2024 in order to complain about the FCDO’s decision to rely on the various exemptions cited to withhold information falling within the scope of his request.

## Reasons for decision

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### Section 27(1) – international relations

10. The FCDO redacted some information from the disclosed digest on the basis of sections 27(1)(a), (c) and (d) of FOIA. These state that:

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) relations between the United Kingdom and any other State...

- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

11. The FCDO acknowledged (in response to the complainant’s point below) that the majority of the information falling within the scope of the request was not with, or does not relate directly to the Vietnamese government. However, the FCDO argued that it does contain information which, if released would prejudice relations between the UK and Vietnam, the interests of the UK abroad and in turn the UK’s ability to protect and promote those interests.
12. More specifically, the FCDO explained that some of the correspondence in which redactions had been made on the basis of section 27 included reports from a meeting between the Vietnamese Ambassador and officials from Linacre College, which would not be expected to be made public, and sensitive discussions between the FCDO and Linacre College which touched upon the Vietnamese position regarding the donation. Given the context of these redactions, and their contents, the FCDO argued that disclosure would be likely to prejudice the UK’s relations with Vietnam.
13. More broadly, the FCDO explained that the UK government helps to promote the UK education offer and partnerships overseas across the education spectrum, including in the university sector. In the context of this case, the FCDO explained that education is a priority objective for the UK-Vietnam Strategic Partnership. The FCDO noted that the UK currently has a positive trade relationship with Vietnam, with collaboration across various areas, and is also in the process of gaining access to a key regional trading group (the Comprehensive and Progressive Agreement for Trans-Pacific Partnership/CPTPP) of which Vietnam is a member. The FCDO argued that in view of this, and taking into account the content of the information withheld on the basis of section 27(1), release of the information concerned would have a negative effect on relations between the UK and Vietnam, including the commercial links between the two countries.
14. The complainant argued that the information in question does not relate to relations with the Vietnamese government, but a private Vietnamese company. Furthermore, the complainant argued that the FCDO’s position in the refusal notice and internal review to support the application of these exemptions were based on highly generic arguments, and did not specify how disclosure of the particular information would have the harmful effects envisaged.
15. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
16. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.<sup>1</sup>
17. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the FCDO believes would be likely to occur if the information was disclosed is applicable to the interests protected by sections 27(1)(a), (c) and (d) of FOIA.
18. With regard to the second and third criteria, the Commissioner accepts the complainant's point that the focus of the information sort by the request concerns relations with a Vietnamese company, rather than with the Vietnamese government directly. However, for the reasons set out by the FCDO at paragraph 12, the Commissioner accepts that the information in scope clearly captures information with the potential to undermine the UK's relations with Vietnam. Furthermore, having considered the content of the withheld information and taking into account the context of the information from which the redactions have been made, in particular the record of a private meeting between Linacre College and the Vietnamese ambassador to the UK, the Commissioner is satisfied that disclosure of the redacted information presents a real and significant risk of harming relations between the UK and Vietnam. In reaching this conclusion the Commissioner has taken

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<sup>1</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040

into account the comments of the Tribunal above. Section 27(1)(a) is therefore engaged.

19. Furthermore, the Commissioner considers it logical and reasonable for the FCDO to argue that a negative impact on such relations also risks harming the UK's ability to protect and promote its interests in Vietnam. Again, in reaching this conclusion he has taken into account the FCDO's submissions above, and in particular notes its point regarding the importance of education to the UK-Vietnam Strategic Partnership, and recognises that disclosure of this information would result in the disclosure of information concerning an issue from precisely this sector. For these reasons, the Commissioner is therefore satisfied that sections 27(1)(c) and (d) are engaged.

### **Public interest test**

20. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at sections 27(1)(a), (c) and (d) outweigh the public interest in disclosing the information.
21. The complainant argued that there have been widespread concerns about the use of partnerships with prestigious academic institutes as a means of "reputation washing" for countries which have poor human rights records, or individuals who have earned significant funds in jurisdictions with questionable records on corruption.
22. In terms of the specific circumstances of this request, the complainant highlighted that the university has accepted donations derived from a jurisdiction such as Vietnam, which is a Communist dictatorship with a record of abusing the human rights of its citizens<sup>2</sup>, and performing poorly in Transparency International's corruption perception index.<sup>3</sup> He argued that where a public body wishes to accept large sums of money earned in this jurisdiction, there is an overwhelmingly clear public interest in transparency.
23. The complainant argued that such disclosure would either reassure the public that concerns have been addressed in full during the donations process, or hold the university accountable for any shortcomings. In his view these factors strongly support the public interest in favour of full disclosure of the requested information.

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<sup>2</sup> <https://freedomhouse.org/country/vietnam>

<sup>3</sup> <https://www.transparency.org/en/countries/vietnam>

24. The complainant noted that the information released by the FCDO showed that "Sovico, the company from which the funds would be ultimately derived for the donation, was acting obstructively towards due diligence firm Kroll in completing its due diligence work."
25. The complainant argued that: "Such an attitude to due diligence raises concerns about what the company might not want to be discovered, and is a clear due diligence red flag. That justifies further disclosure, as there is no confidence in iniquity."
26. The FCDO acknowledged that there was a public interest in knowing more about the UK's relations with other countries, including on trade and investment issues. However, it argued that the effective conduct of international relations depends upon maintaining trust and confidence between governments. This relationship of trust allows for the free and frank exchange of information on the understanding that it will be treated in confidence. If the UK does not respect such confidence, its ability to promote and protect UK interests through international relations will be hampered, which will not be in the public interest. In the circumstances of this case, the FCDO argued that it would be firmly against the public interest to disclose information which would undermine the UK's relations with Vietnam and in turn the UK government's ability to provide support on international trade and investment initiatives.
27. The FCDO also noted that it released a significant amount of information in response to the complainant's request and that the information redacted both under section 27 (and under the other exemptions cited) would not, in its view, add significantly to public knowledge on this issue.
28. The Commissioner agrees with the complainant that there is a clear public interest in understanding the nature of donations to prestigious UK institutions where there is some concern as to the source of such donations. Whilst it is clearly not for the Commissioner to comment on the validity or otherwise of such concerns, he does recognise that the donation in question did attract some controversy.<sup>4</sup> Furthermore, the Commissioner agrees with the complainant that there is a particular public interest in understanding the nature of the due diligence undertaken in relation to such donations, especially in this case in light of comment highlighted by the complainant at paragraph 24.

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<sup>4</sup> <https://theoxfordmagazine.com/news/education-minister-actively-investigating-155m-donation-to-oxfords-linacre-college/>

29. However, having considered the specific information that has been redacted by the FCDO on the basis of section 27(1), the Commissioner does not consider that disclosure of this would contribute to the public's understanding of due diligence matters concerning this donation. Furthermore, whilst disclosure of the information would aid the public's wider understanding of the donation process in this case, in the Commissioner's view the extent to which the disclosure of the information withheld on the basis of section 27(1) would do so is arguably limited.
30. With regard to the public interest in maintaining the exemptions, the Commissioner considers there to be a significant public interest in ensuring the UK can maintain effective relations with its international partners. In the circumstances of this case the Commissioner is satisfied that disclosure of the material presents a serious and credible risk to the UK's relations with Vietnam, an outcome which would be firmly against the public interest as it would undermine the UK's ability to protect and promote its interests with Vietnam in the contexts identified by the FCDO. He notes that such an outcome risks a broader impact not simply on the UK's relations with Vietnam in the context of the education sector, but more broadly. In view of the above the Commissioner has concluded that the public interest for each of the three separate exemptions cited by the FCDO favours maintaining the exemption in question.

#### **Section 41 – information provided in confidence**

31. Section 41(1) of FOIA states that:

“(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

32. Therefore, for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party and the disclosure of that information has to constitute an actionable breach of confidence.
33. With regard to whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- whether the information had the necessary quality of confidence;
  - whether the information was imparted in circumstances importing an obligation of confidence; and,
  - whether an unauthorised use of the information would result in detriment to the confider.
34. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.
35. The Commissioner has assessed each of these criteria in turn, taking into account the submissions provided to him by both the FCDO and the complainant.

Was the information obtained from another person?

36. With regard to the requirements of section 41(1)(a), the FCDO explained that the information withheld on the basis of this exemption had been provided to it by Linacre College. The Commissioner has examined this information and accepts this is clearly the case. This limb of the exemption is therefore met.

Does the information have the necessary quality of confidence?

37. In the Commissioner's view information will have the necessary quality of confidence if it is not otherwise accessible and, it is more than trivial.
38. Having examined the information the Commissioner is satisfied that it is clearly more than trivial and is not otherwise accessible. This limb of the exemption is therefore met.

Was the information imparted in circumstances importing an obligation of confidence?

39. The complainant questioned whether the information in question had in fact been provided to the FCDO with the expectation that it would be treated confidentially given that it is a consultation with central government on a matter of considerable public interest.
40. The FCDO explained that it had liaised with Linacre College who had confirmed that the information in question had been provided with the clear expectation that it would be treated confidentially. The Commissioner acknowledges this point and considers that this is supported by the content of the withheld information. This limb of the exemption is therefore met.



Would disclosure be of detriment to the confider?

41. The FCDO argued that disclosure of the information withheld on the basis of section 41(1) would be detrimental to Linacre College's reputation in terms of building a relationship of trust between the College and current or potential partner organisations.
42. Having considered the content of the withheld information the Commissioner agrees with this assessment. The material contains a frank discussion between Linacre College and the FCDO about matters concerning the donation. The Commissioner accepts that disclosure of such information would present a real reputational risk to the College both in respect of this donation, and also, more broadly in relation to how it is viewed by potential partner organisations in the future.

Is there a public interest defence to the disclosure of the information?

43. Section 41 is an absolute exemption and so there is no requirement for an application of the conventional public interest test. However, the common law duty of confidence contains an inherent public interest test. This test assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence (and is the reverse of that normally applied under FOIA). British courts have historically recognised the importance of maintaining a duty of confidence, so it follows that strong public interest grounds would be required to outweigh such a duty.
44. However, disclosure of confidential information where there is an overriding public interest is a defence to an action for breach of confidentiality. The Commissioner is therefore required to consider whether the FCDO could successfully rely on such a public interest defence to an action for breach of confidence in this case.
45. For the reasons set out above, the complainant argued that there was a clear public interest in the disclosure of information withheld by the FCDO. In the context of section 41, he argued that the likelihood of a UK public body suing another UK public body for breach of confidence was highly remote, and this was likely to lead to a public reaction that such an action was a waste of public money.
46. The FCDO maintained that section 41(1) applied as disclosure of the information would constitute an actionable breach of confidence. As noted above, the FCDO accepted that there was a public interest in the subject matter of the request. However it emphasised that disclosure of the information concerned would undermine the principle of confidentiality and the relationship of trust between the FCDO and those who share information with it on a confidential basis. As result, the

FCDO argued that in turn, this would discourage individuals and organisations from sharing confidential information with it in future. Furthermore, as set out above the FCDO considered that unauthorised disclosure of the information withheld on the basis of section 41(1) would be detrimental to Linacre College, and it did not consider there would be a public interest defence to disclosure.

47. With regard to the complainant's observation that the College would be very unlikely to bring an action for a breach of confidence against the FCDO, the Commissioner would highlight this comment in his guidance: "It is not necessary for the authority to establish that a particular person would be likely to bring a claim for breach of confidence, only that a person would be able to do so."<sup>5</sup>
48. As discussed above, the Commissioner accepts that there is a public interest in the disclosure of information regarding this donation. Furthermore, in respect of the specific information that has been withheld on the basis of section 41(1) he accepts that in terms of volume, marginally more information has been withheld on the basis of this exemption than that redacted on the basis of section 27(1). Furthermore, the Commissioner accepts that disclosure of this information would provide the public with a direct insight into issues relating to the progress of the donation process, albeit that these would not necessarily address all of the issues identified by the complainant.
49. However, the Commissioner considers that there is clear public interest in ensuring that the principle of confidentiality is not undermined and the relationship of trust between public authorities and confiders of information is maintained. In the context of this case, the Commissioner recognises the importance of organisations such as the College being able to confidentially brief the FCDO on issues such as this, both for the benefit of such institutions, but also for the FCDO, so that it is in a position to provide appropriate advice and support. The Commissioner is also conscious of the broader impact on the FCDO if such information is disclosed and considers it a real risk that if the confidential information was disclosed then parties in the future are likely to be more reluctant to share confidential information with the FCDO.
50. Taking the above into account, and given the test here assumes that the public interest in maintaining confidentiality will prevail unless the public interest in disclosure outweighs the public interest in maintaining the confidence, the Commissioner has concluded that there is not a

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<sup>5</sup> <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf> - paragraph 63

sufficiently compelling argument to support a public interest defence against an action for breach of confidence. The information to which the FCDO has applied section 41(1) to is therefore exempt from disclosure on the basis of that exemption.

### **Section 43(2) – commercial interests**

51. Section 43(2) states that:

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

52. In its internal review the FCDO argued that disclosure of the information withheld on the basis of this exemption would, if released, be likely to prejudice Linacre College’s position regarding the proposed donation and its ability to negotiate and compete effectively for future investment opportunities. In further submissions to the Commissioner the FCDO expanded on this position and explained that the redacted information contained sensitive details relating to Linacre College’s position regarding the negotiations about the proposed donation. The FCDO explained that it has liaised with College in relation to this point and provided the Commissioner with a copy of its exchanges.
53. As section 43(2) is prejudiced based exemption, in order for it to be engaged the criteria at paragraph 15 have to be met.
54. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the FCDO believes would be likely to occur if the information was disclosed is applicable to the interests protected by section 43(2) of FOIA.
55. With regard to the second and third criteria, the Commissioner accepts that given the content of the information withheld on the basis of section 43(2) disclosure risks undermining the College’s position in respect of the current donation in that it would reveal sensitive issues regarding its position on this. Furthermore, the Commissioner accepts that more broadly disclosure risks undermining the College’s position in respect of future donations or partnerships its wishes to secure. This is because the withheld information contains sensitive information, the disclosure of which would clearly damage the College’s reputation as a trusted and respected commercial partner, both in respect of this donor and others. The Commissioner is therefore satisfied that section 43(2) is engaged.

### **Public interest test**

56. Section 43 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption contained at section 43(2) outweighs the public interest in disclosing the information.
57. In addition to the public interest arguments set out above, the complainant argued that there is no public interest in accepting funding from questionable sources, and when questions arise, the public interest lies in scrutinising these deals closely.
58. The FCDO acknowledged that there is a public interest in openness and transparency on commercial issues. However, the FCDO argued that there is also a strong public interest in protecting the legitimate commercial interests of those who share information with it. In the circumstances of this case the FCDO argued that disclosure of the information withheld on the basis of this exemption would be reputationally damaging for both parties and would make it less likely that companies or individuals would share commercially sensitive information with the FCDO in the future.
59. For the reasons set out above, the Commissioner accepts that there is a legitimate public interest in the disclosure of information on this topic. In terms of the material withheld on the basis of section 43(2) this would provide some insight into the process of this donation being secured. However, the Commissioner agrees with the FCDO that there is a strong public interest in ensuring that third parties who contact and liaise with it on matters such as this do not do so at the expense of their own commercial interests. More broadly, the Commissioner also accepts the FCDO's point that it would be against the public interest if organisations were less likely to share commercial information with it in the future.
60. In respect of the complainant's point about being able to scrutinise this donation, the Commissioner acknowledges that disclosure of this information would contribute to this aim but he is conscious that the redactions applied by the FCDO to the disclosed information are arguably limited, and the disclosed information does allow for some level of scrutiny to take place. Taking the above into account the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 43(2) of FOIA.

### **Section 40(2) – personal data**

61. The FCDO explained that on the basis of section 40(2) it has redacted the names and contact details of junior officials and third parties. It

noted that the individuals concerned do not have significant responsibilities in relation to the subject matter of the material.

62. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
63. In this case the relevant condition is contained in section 40(3A)(a).<sup>6</sup> This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
64. It is common practice for a public authority to argue that the names and contact details of junior officials are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names and contact details of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance.<sup>7</sup>
65. The complainant explained that in *R (IAB & Ors.) v Secretary of State for the Home Department & Anor* [2023] EWHC 2930 (Admin), Mr Justice Swift noted in the judgement "names of civil servants should not routinely be redacted from disclosable documents; redaction should take place only where it is necessary for good and sufficient reason", noting that "junior civil servants" include civil servants with significant responsibilities. He noted that the FCDO had claimed that no persons with significant responsibilities have been redacted, but he asked the Commissioner to review this assessment.
66. The Commissioner has reviewed the names of junior officials redacted on the basis of section 40(2) and agrees with this assessment. Therefore, he accepts that such information is exempt from disclosure on the basis of the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from

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<sup>6</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

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[https://ico.org.uk/media/fororganisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf) - see page 12

disclosure on the basis of section 40(2) of FOIA.<sup>8</sup> He notes that the contact details of senior officials (ie email addresses and telephone numbers) have been redacted, but again this in line with the approach of previous disclosures where the names of senior officials are disclosed, but their contact details are not.

67. Furthermore, the Commissioner is also satisfied that disclosure of similar information about the representatives from the third parties would be a breach of data protection principles as it would result in the disclosure of personal information about them that they would not necessarily expect to be made public. In addition, disclosure of such information would not contribute to or meet in any way the public interests considered above. Such information is therefore also exempt from disclosure on the basis of section 40(2) of FOIA.

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<sup>8</sup> IC-114449-B7P7 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> paragraphs 49-71 and IC-110922-T9R1 Paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62

## **Right of appeal**

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68. 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)

69. 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.
70. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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