

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

### **Decision notice**

**Date:** 10 January 2025

**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 the Foreign, Commonwealth & Development Office (FCDO) seeking a) copies of "DipTels", ie diplomatic telegrams, from the British Embassy in Caracas to the FCDO in London relating to Boris Johnson's 2024 visit to Venezuela and b) communications between David Cameron and Boris Johnson about this visit. The FCDO stated that it did not hold any "DipTels", and initially withheld two text messages falling within the second part of the request on the basis of section 27(1)(a) (international relations) of FOIA. It subsequently disclosed the two text messages with redactions on the basis of sections 27(1)(a) and 40(2) (personal data) of FOIA.
2. The Commissioner's decision is that:
  - On the balance of probabilities the FCDO does not hold information falling within the scope of part 1 of the request.
  - The information redacted on the basis of section 27(1)(a) is exempt from disclosure on the basis of that exemption.
  - The information redacted on the basis of section 40(2) is not exempt from disclosure on the basis of that exemption.
  - The FCDO breached section 10(1) of FOIA by failing to respond to the request within 20 working days.

3. The Commissioner requires the FCDO to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a further copy of the text message between Mr Cameron and Mr Johnson with the information previously withheld on the basis of section 40(2) unredacted.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. The complainant submitted the following request to the FCDO on 13 March 2024:

"1) Please provide a copy of all diptels sent by the British Embassy in Caracas to the Foreign, Commonwealth and Development Office relating to Boris Johnson's 2024 visit to Venezuela.

2) Please provide a copy of correspondence (including email or messaging platform, including on any private platforms operated by Cameron) between David Cameron and Boris Johnson relating to the 2024 visit."
6. The FCDO responded on 17 May 2024. In relation to part 1 of the request it explained that it did not hold any information. In relation to part 2 of the request, the FCDO confirmed that it held information but it considered this to be exempt from disclosure on the basis of section 27(1)(a) (international relations) of FOIA.
7. The complainant contacted the FCDO on the same day to ask for an internal review. He challenged both its position that it did not hold any information falling within the scope of part 1 of the request and its decision to withhold the information it did hold falling within the scope of part 2.
8. The FCDO informed him of the outcome of the internal review on 15 July 2024. It explained the searches that had been undertaken to locate information falling within the scope of part 1 of the request and maintained its position that it did not hold any DipTels in scope. With regard to part 2 of the request, the FCDO upheld the decision to withhold the information in scope but explained that these consisted of two text messages. It also provided the times and dates these messages

were sent: a message was sent by the then Foreign Secretary (ie David Cameron) to Boris Johnson on 7 February 2024 at 1507 hrs and a message was sent by Mr Johnson to the Foreign Secretary on 7 February 2024 at 1615 hrs.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 16 July 2024 in order to complain about the FCDO's handling of his request. He disputed the FCDO's decision to withhold the requested text messages on the basis of section 27(1)(a) of FOIA. He also argued that the FCDO's searches in relation to the information sought by part 1 of the request were inadequate to locate any information that may be held. In addition, the complainant was dissatisfied with the FCDO's delay in responding to his request.
10. During the course of the Commissioner's investigation the FCDO provided the complainant with redacted copies of both messages. One word in the message from Mr Cameron to Mr Johnson was redacted on the basis of section 40(2) and the final part of the last sentence in the text message from Mr Johnson to Mr Cameron was redacted on the basis of section 27(1)(a). The FCDO maintained its position that it did not hold any information falling within the scope of part 1 of the request.

## **Reasons for decision**

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### **Part 1 of the request**

11. In cases such as this where there is some dispute as to whether all of the information falling within the scope of the request has been located, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any further information which falls within the scope of the request.
13. In applying this test the Commissioner will consider the results of the searches undertaken by the public authority and/or other explanations offered as to why no further information is held.

### The complainant's position

14. The complainant disputed the FCDO's position that it did not hold diplomatic telegrams related to Mr Johnson's visit. He noted that in the internal review the FCDO explained that it had searched its records by the term "diptel Caracas" and found no records. The complainant argued that this was clearly an unreasonable search.
15. Rather, the complainant argued that "diptels", which the FCDO knows is a common shortening for diplomatic telegrams, are unlikely to be titled or referred to as "diptel Caracas" in any records. He argued that a more reasonable search of electronic records might be something like "'Boris Johnson" AND "Venezuela"'.
16. In addition, the complainant noted that in correspondence released by the Advisory Committee on Business Appointments (Acoba), Mr Johnson said about the trip that "I was extensively briefed by HMA (His Majesty's Ambassador) Caracas before the meeting and used the occasion to push for democracy, human rights and the support of Ukraine."<sup>1</sup> The complainant argued that this suggests some formal involvement with the embassy, details of which were likely transmitted back to London.
17. As a result in the complainant's view, the search method was therefore bound to fail, as the FCDO was likely to be well aware. It is therefore not clear how it could credibly come to the conclusion that no records are held.

### The FCDO's position

18. In submissions to the Commissioner the FCDO explained that "DipTels" issued in the department follow a standard naming convention where the term "DipTel" is followed by the name of the post that issued them. Therefore, a search for "DipTel Caracas" would retrieve all DipTels issued by Caracas. The FCDO explained that this approach allowed it to efficiently check and confirm if a DipTel had been issued regarding the visit in question. It explained that its searches were based on the team's knowledge and understanding of how DipTels are produced and issued, along with how information is managed inside the FCDO, ensuring the

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<sup>1</sup> <https://www.gov.uk/government/publications/johnson-boris-secretary-of-state-foreign-and-commonwealth-office-acoba/correspondence-from-acoba-to-boris-johnson-breach-of-the-rules-merlyn-advisors-ltd#:~:text=I%20was%20extensively%20briefed%20by,and%20the%20support%20of%20Ukraine>

most effective and efficient search possible to yield relevant results if any information was within scope.

19. The FCDO also confirmed that all DipTels issued are held in an electronic archive linked to the post that issued them, and that the Caracas 2024 DipTel archive was searched by the information manager responsible for maintaining the FCDO's DipTel archive and none of them refer to, or mention, the visit of Mr Johnson. The FCDO argued that the suggested search terms posed by the complainant would be unlikely to yield results for any relevant DipTels due to the fact the word Venezuela may not always be used in all DipTels issued by Caracas however the word Caracas is.
20. The FCDO therefore argued that its search strategy for information falling within the scope of part 1 of the request was not unreasonable but conducted in accordance with its standard procedures, and this method is designed to ensure comprehensive and accurate retrieval of relevant documents.
21. In addition, the FCDO explained that its DipTel policy clearly states that DipTels are not used to report routine visits and events and issuing DipTels is decided on by the Head of Mission, on a case by case basis. The FCDO argued that this further supported the finding that no DipTel could be located for the visit in question.
22. The Commissioner noted that the complainant had argued in his internal review request that Mr Johnson's comments to Acoba suggested that details of his formal engagement with the embassy may have been transmitted back to the FCDO in London. The FCDO acknowledged that this could have been the case, but the request only sought DipTels on this subject and therefore its searches focused simply on DipTels.

#### The Commissioner's position

23. In view of the FCDO's submissions above and its explanation as to how DipTels are stored, the Commissioner is satisfied that its searches for relevant DipTels were reasonable and focused ones. In particular, he notes that the Caracas 2024 DipTel archive was searched and none of them refer to, or mention, the visit of Mr Johnson.
24. On the balance of probabilities the Commissioner is therefore satisfied that the FCDO does not hold any information falling within the scope of part 1 of the request.

## **Part 2 of the request**

### **Section 27 – international relations**

25. The FCDO withheld a small part of Mr Johnson's message to Mr Cameron on the basis of section 27(1)(a) of FOIA.

26. This states 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"

#### The complainant's position

27. In his submissions to the Commissioner (prior to the disclosure of redacted versions of the messages) the complainant argued that it was not clear why the disclosure of this material would prejudice relations, or whether prejudice of UK-Venezuela relations would be material. The complainant suggested that the arguments put forward in the refusal notice and internal review were highly generic and did not deal with the specific material in hand. Furthermore, the complainant emphasised that Venezuela is not a key UK ally, or a country with which relations are a key part of UK foreign policy, and as a result the practical harm of prejudice is likely to be highly limited. In addition the complainant argued that consideration must be given to the fact that Venezuela is an authoritarian dictatorship, and any possible protests from it about the normal operation of transparency regulation in the UK must be seen in that context.

#### The FCDO's position

28. In its submissions to the Commissioner the FCDO explained that the exchange between Mr Johnson and Mr Cameron happened at a time of escalating regional tension regarding the territorial integrity of a key UK ally (the Commissioner understands this to be a reference to Guyana). In this context, it argued that disclosing the content of the material redacted on the basis of section 27(1)(a) could potentially prejudice UK relations and the FCDO's staff in the wider region. The FCDO emphasised that the content of the redacted information is sensitive and could have several adverse effects.

29. Firstly, prejudice to diplomatic relations as the release would undermine the trust and confidence that foreign governments place in the UK. The FCDO emphasised that diplomatic relations are built on the expectation of confidentiality, and disclosing sensitive communications could damage the UK's reputation as a reliable partner. In turn the FCDO argued that

this could lead to a reluctance from other states to share critical information with the UK in the future, thereby impairing diplomatic efforts and international cooperation.

30. Secondly, disclosure could impact in regional stability. The FCDO highlighted that the message was exchanged during a time of escalating tension in the region. It argued that disclosure of the withheld information could exacerbate the situation, potentially leading to further instability. As a result, this could have serious implications for the security and well-being of the region, as well as for the UK's strategic interests.
31. Thirdly, the FCDO argued that disclosure of the withheld information could put UK staff in the wider region at risk. Hostile entities could exploit the information to target UK personnel or assets, thereby endangering their safety and compromising their ability to operate effectively.

#### The Commissioner's position

32. 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.
33. 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>2</sup>

34. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCDO clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect.
35. With regard to the second and third criteria, the Commissioner appreciates the complainant's point regarding the UK's relations with Venezuela and accepts that there is arguably a case for viewing the UK's diplomatic relations with that country differently to other states, particularly allies. However, the Commissioner is conscious of the regional tension at the time of the request as Venezuela renewed its claim for a disputed part of Guyanese territory. In terms of UK actions in response to this the Commissioner notes this statement by the relevant Minister in December 2023<sup>3</sup> and further that in the same month it was announced that "HMS Trent will visit regional ally and Commonwealth partner Guyana later this month as part of a series of engagements in the region during her Atlantic Patrol Task deployment".<sup>4</sup>
36. In this context the Commissioner accepts that disclosure of the information withheld on the basis of section 27(1)(a) in March 2024, ie at the time of the request, would have been likely to exacerbate tensions in the region given the sensitive content of the information. In turn the Commissioner accepts that this risks making the UK's relations with countries in the region more difficult and/or requiring a particular diplomatic response that would otherwise not have been necessary, and moreover risks destabilising relations in the region. On this basis the Commissioner is satisfied that section 27(1)(a) is engaged.

### **Public interest test**

37. Section 27(1)(a) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption cited by the FCDO outweighs the public interest in disclosing the information.

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<sup>2</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

<sup>3</sup> <https://hansard.parliament.uk/commons/2023-12-14/debates/DC8DF22E-DA0B-4406-A045-5EE9A06AAD86/VenezuelaThreatToGuyana>

<sup>4</sup> <https://www.bbc.co.uk/news/uk-67806227>



38. The complainant argued that there was a clear public interest in the requested information being disclosed. He noted that Mr Johnson failed to be cleared by Acoba to take on his advisory role with Merlyn Advisors which the talks in Venezuela formed a part.<sup>5</sup> The complainant argued that where the activity of a former prime minister has broken rules set out by government to hold them to account, there is a clearly elevated public interest in transparency.
39. The FCDO acknowledged that the government is obliged to be open, transparent, and accountable. In addition, it also acknowledged that there is a public interest in this issue. However, it argued that in this case the public interest in maintaining effective diplomatic relations and ensuring the safety of UK personnel outweighs the interest in disclosure. In support of this finding, the FCDO emphasised that the information could have far-reaching consequences that would not serve the public interest, including prejudice to diplomatic relations, regional stability, and the safety of UK personnel.
40. In terms of determining the balance of the public interest, the Commissioner recognises that the FCDO has now disclosed the majority of the information falling within the scope of the request. In his view this disclosure contributes significantly to the public interest in transparency in relation to Mr Johnson's trip. Whilst, the Commissioner accepts that disclosure of the remaining redacted information would provide a 'full picture' of the details Mr Johnson communicated to Mr Cameron, in his view the need for such information to be released is reduced in light of the information that has now been disclosed. In contrast, the Commissioner accepts that there remains a significant public interest in ensuring that the UK can maintain effective relations in the region. As set out above, in his view disclosure of the withheld information presents a real risk to this and as a result, in the Commissioner's view, the balance of the public interest favours withholding the information redacted on the basis of section 27(1)(a).

#### **Section 40 – personal data**

41. The FCDO withheld one word from Mr Cameron's message to Mr Johnson on the basis of section 40(2) of FOIA.
42. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the

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<sup>5</sup> <https://www.bbc.co.uk/news/uk-politics-68855382>

requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

43. 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 General Data Protection Regulation ('GDPR').
44. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
45. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

46. Section 3(2) of the DPA defines personal data as:

'any information relating to an identified or identifiable living individual'.

47. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
48. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
49. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
50. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information withheld on the basis of section 40(2) constitutes Mr Cameron's personal data as it is clearly linked to him. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

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

51. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

52. The most relevant DP principle in this case is principle (a).

**Would disclosure contravene principle (a)?**

53. Article 5(1)(a) of the GDPR states that:

‘Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject’.

54. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

55. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

**Lawful processing: Article 6(1)(f) of the GDPR**

56. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

‘processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child’<sup>7</sup>

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<sup>7</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

57. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

58. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interests**

59. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

60. For the reasons set out previously in this decision notice the Commissioner considers there to be a legitimate interest in the disclosure of the text messages exchanged between Mr Cameron and Mr Johnson on this issue.

### **Is disclosure necessary?**

61. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so a measure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least restrictive means of achieving the legitimate aim in question.

62. The Commissioner accepts that disclosure of the redacted information is necessary in order to provide the public with an understanding of the nature of the exchanges between Mr Cameron and Mr Johnson.

**Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

63. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
64. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
65. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
66. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
67. The FCDO argued that Mr Cameron would not expect this personal information to be made public. It noted that the text messages are very casual in tone and informal, and furthermore that release of the single word redacted on the basis of section 40(2) would not contribute to, or significantly meet, the public interest in this issue.
68. The Commissioner does not agree with the FCDO's assessment. In his view Mr Cameron was clearly texting in his role of Foreign Secretary and as a result of this he should have had an expectation that the contents of his communication could be disclosed under FOIA. Furthermore, in

the Commissioner's view there is something to be gained by disclosure of the redacted information so that the public can fully understand the tone of the communications between the two parties. Moreover, the Commissioner does not consider that disclosure of the redacted information would represent any significant infringement into Mr Cameron's privacy.

69. As a result the Commissioner has determined that there is a sufficient legitimate interest to outweigh Mr Cameron's fundamental rights and freedoms in relation to the information redacted on the basis of section 40(2). The Commissioner therefore considers that there is an Article 6 basis for processing such information and so the disclosure of such information would be lawful.

### **Fairness and transparency**

70. Even though it has been demonstrated that disclosure of this information under FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
71. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
72. The requirement for transparency is met because as a public authority, the FCDO is subject to FOIA.
73. For the above reasons the Commissioner has concluded that the information redacted on the basis of section 40(2) is not exempt from disclosure.

### **Procedural matters**

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74. Section 1(1) of FOIA:

"(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

75. Section 10(1) requires a public authority to comply with the requirements of section 1(1) within 20 working days.

76. As the FCDO's initial response to the complainant was not issued within 20 working days of the request the Commissioner has found that it breached section 10(1) of FOIA.



## Right of appeal

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77. 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)

78. 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.
79. 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**  
**Cheshire**  
**SK9 5AF**