



**Tribunals Service**  
Information Tribunal

**Information Tribunal Appeal Number: EA/2007/0085**

**Information Commissioner's Ref: FS50140350**

**Heard at Procession House, London, EC4**

**Decision Promulgated**

**On 21<sup>ST</sup> February 2008**

**20<sup>th</sup> March 2008**

**BEFORE**

**CHAIRMAN**

**Fiona Henderson**

**And**

**LAY MEMBERS**

**Paul Taylor**

**And**

**Steven Shaw**

**BETWEEN**

**MR. M. P. KING**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**Respondent**

**and**

**DEPARTMENT FOR WORK AND PENSIONS**

**Additional Party**

**Decision**

The Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 14<sup>TH</sup> August 2007.



**SUBSTITUTED DECISION NOTICE**

**Dated 18<sup>th</sup> March 2008**

**Public authority: Department for Work and Pensions**

**Address of Public authority: The Adelphi,  
1-11 John Adam Street,  
London WC2N 6HT**

**Name of Complainant: Mr. M. P. King**

**The Substituted Decision**

For the reasons set out in the Tribunal's determination, Decision Notice FS50140350 is amended to the following extent by substituting the paragraphs set out below for those in the original Decision Notice:

29 Whilst much of the information withheld is outside the scope of Mr King's request, some of the information withheld does fall within the scope of the complainant's request. However, the exemption set out at section 31(1)(a) FOIA is engaged and the balance of public interest lies in withholding the information.

31–32 DWP have now complied with the request and supplied to the complainant all the information that they are required to under section 1 FOIA.

39 The public authority did not deal with the following elements of the request in accordance with the requirements of the Act:

- i) Breach of section 1 of the Act as the requested information that fell to be disclosed was not provided to

the complainant until after the complaint had been lodged with the Commissioner.

**Action Required**

No steps are required to be taken

Dated this 19<sup>th</sup> day of March 2008

Fiona Henderson

Deputy Chairman, Information Tribunal

## Reasons for Decision

### Introduction

1. This is an appeal by the Appellant (Mr King) to the Information Tribunal under section 57 of *the Freedom of Information Act 2000* (FOIA) in relation to the Information Commissioner's Decision Notice FS50140350 dated 14<sup>th</sup> August 2007, which considered his request for information from Jobcentre Plus, a part of the Department for Work and Pensions (DWP).

### The request for information

2. The background to the appeal arises out of Mr King's concern that a policy had been adopted by Jobcentre Plus whereby people wishing to make a benefit application were expected to do so by telephone to a call centre rather than by handing in a written application. Mr King expressed the concern that personal information provided over the telephone could be misused and on 8<sup>th</sup> May 2006 wrote to Miss D.K.Riyait of the District Correspondence Team stating:

*"Finally, in view of the increasing risk of identity theft I am concerned about providing personal information over the public telephone to your Contact Centre. The public telephone system is not secure and could result in personal information being appropriated for illegal purposes. Please let me know what other arrangements you have in place for the provision of personal and sensitive information in support of a claim".*

3. On 30<sup>th</sup> May 2006, Mrs Kay Jackson (District Communications Manager) responded by letter stating:

*"Our Contact Centre network has been set up in collaboration with both British Telecom and our own Department's security specialists. A comprehensive risk assessment has been completed to identify and counter any potential security threats to our telephony system."*

4. In response to this information, Mr King wrote a letter to the DWP on 5<sup>th</sup> June 2006 which included the following:

*“Although your Contact Centre telephone network may be secure, customers are telephoning from insecure public telephone networks which would not be a secure environment for personal and sensitive information...*

*“Finally, I would be interested to see the risk assessment carried out of your telephone system to which you refer, and I should be obliged if you would make it available to me”.*
5. Mr King wrote to Mrs Jackson twice in order to chase the progress of this request. Firstly on 10<sup>th</sup> July 2006, making plain that this was a request under the Freedom of Information Act 2000 (FOIA); and again by letter on 16<sup>th</sup> August 2006 when he noted that although he had had a response to other questions, his request for *“the risk assessment carried out on your telephone system to which you referred in your letter of 30<sup>th</sup> May”* was still outstanding.
6. Mr King’s request was refused in a letter from Sharon Fenwick (Communications Manager) on behalf of the DWP on 30<sup>th</sup> August 2006. In this refusal she explained that:

*“The information you requested is being withheld as it falls under the exemption in section 38 of the Freedom of Information Act. This exemption covers safety and security. In applying this exemption the department has balanced the public interest in withholding the information against the public interest in disclosing the information...*

*I understand that your request for information is based on concerns as to the security of data collected using our telephony. Providing details of any risk assessment carried out on the telephony could compromise the security of the system by identifying potential weakness and any controls put in place to address them if any existed.”*

7. Mr King responded to this refusal by the DWP by letter of 5<sup>th</sup> September 2006 in which he pointed out that section 38 FOIA does not deal with “safety and security” but “health and safety” and stating:  
*“ It is clear that this exemption does not apply to the information I have requested. Consequently I must ask that you review my request for information.”* And asking for a response within 14 days.
8. A month later on 2<sup>nd</sup> October 2006, Mr King wrote again indicating that he had not had a response to his request for a review of 5<sup>th</sup> September 2006, and asking that the DWP review their decision not to supply the information requested.
9. The DWP reviewed the decision and notified Mr King in an undated letter from Deborah Boore (Operational Development Manager) that:  
*“Having reviewed all of the details of your request I am content that the decision to withhold the information on Health and Safety grounds under the exemption in section 38 of the Freedom of Information Act was correct”.*  
This letter correctly cited the exemption as “health and safety” but gave no explanation as to why health and safety was engaged.

#### The complaint to the Information Commissioner

10. On 29<sup>th</sup> October 2006, Mr King applied to the Commissioner asking him to consider the DWP’s handling of his request. Prior to the Commissioner taking any active steps to investigate the case, Colin Denson (Planning and Risk Manager) at the DWP wrote to Mr King on 24<sup>th</sup> January 2007 informing him that:
  - In response to the appeal to the Information Commissioner, Jobcentre Plus had reconsidered its decision not to release the risk assessment,
  - Extracts from the risk assessment were attached,
  - Some information was still being withheld under section 38 FOIA “This exemption covers *safety and security*”. (Tribunals emphasis)

- Providing the full details of the risk assessment carried out on the telephony could compromise the security of the system...”

11. Mr King wrote to the Information Commissioner on 5<sup>th</sup> February 2007 noting:

*“..section 38 of the Freedom of Information Act 2000 relates to “Health and Safety” and not “safety and security” as Jobcentre Plus have claimed. The reason given by Jobcentre Plus relates to the security of their system and not to the safety of any individual, and so the exemption does not apply in this case.”*

In this same letter Mr King expressed the view that the Commissioner was bound under section 50(1) FOIA to make a decision at the time of his application, and asking for a copy of the decision notice without further delay.

12. Ms Rachael Cragg (Senior Complaints Officer from the Information Commissioner’s Office (ICO)) wrote on 9th February 2007 to Mr King and explaining that an investigation had now begun but no decision notice was yet issued. She further stated that:

*“I have examined the recent letter sent to you from Mr Colin Denson of the DWP and I do not believe at this stage that section 38 of the Act has been applied correctly. I have contacted the DWP and asked them to reconsider their refusal to release the information based on my initial view, and requested that they respond to me within the next ten days.....*

*I will keep you informed of developments in the investigation of your complaint.”*

13. At the time of the investigation, Mr King had entered into correspondence with the Information Commissioner’s Office in relation to the statutory validity or otherwise of the Commissioner’s “Robust Handling Policy” insofar as it had been applied to 2 other cases, which he had submitted to the Commissioner. On 9<sup>th</sup> February 2007 he submitted a pre-action Protocol for a proposed claim for Judicial

Review in which he included particulars of this case in his grounds. His reasoning was further explained in his letter of 15<sup>th</sup> February to Jane Durkin (Assistant Commissioner) when Mr King expressed the view that Section 50(2) of FOIA:

*“requires that decisions relate to the time of receipt of my complaint, not the time my complaint was considered as you have claimed”.*

14. Charles Cushing (DWP Adjudication and Constitutional Issues Information Policy Division) sent an email of 29<sup>th</sup> March 2007 attaching a letter, dated 27<sup>th</sup> March 2007, from Janine Fearon (Jobcentre Plus National Freedom of Information Focal Point) defending the reasons that the withheld material was exempt under section 38 FOIA and including the considerations followed in the public interest test. The email further stated that:

- The DWP was continuing to assess the withheld information and to consider whether, in the alternative to section 38, a robust case could be made under section 36 FOIA (Prejudice to the effective conduct of public affairs),
- The DWP were also considering whether the exempted information fell to be withheld under section 31(1)(a) FOIA (prejudice to the prevention (or detection ) of crime),
- The DWP were also considering whether the exempted information actually fell within the scope of Mr Kings request because:

*“The original request seems to have arisen as he was querying the fact that he is required to supply personal details over the telephone when making a new claim to benefit and wanted to know how he could be sure that his personal information was secure. In response to these concerns Mr King was advised that “the telephony used in our (DWP/JC+) contact centres was risk assessed to ensure that it was secure however, this was not entirely accurate as the “Accord NOSP DWP Jobcentre Plus System Security Policy (SSP)” that was identified as a “ risk assessment to telephony” goes much wider than that and is a high level document regarding all aspects of system security and*



*does not address Mr King's concerns. My contention is that such concerns would have been best allayed by providing Mr King with detailed information about departmental policies and procedures surrounding the confidentiality and security of our customers' information. ... I will ensure that his (sic) material is sent to Mr King."*

- A copy of the full document and a separate copy of the withheld material was being sent to the ICO.

15. After further communication between the DWP and ICO Mr Cushing wrote to the ICO on 3<sup>rd</sup> July 2007 indicating that:

- The DWP were now of the view that they only needed to look at and disclose those parts of the "ACCORD" that actually covered any risk assessment involving telephony,
- Outside of the FOIA regime in furtherance of good customer relations, the DWP were nevertheless releasing much of the material to Mr King, even though it was outside of the scope of his request,
- The DWP were no longer relying upon section 38 FOIA,
- The DWP's primary assertion was that the withheld material was not within the scope of the request but in the alternative they were relying upon sections 31(1)(a), section 36 and section 24 (National Security) of FOIA.

16. Mr Cushing also wrote to Mr King on 3<sup>rd</sup> July 2007 enclosing much of the risk assessment and the policies and procedures relating to the protection of personal information and indicating:

*"..unfortunately the information given to you originally was not strictly correct. The reference to a telephony risk assessment was unfortunate because that document does not relate to the thrust of your concerns.*

*..*

*I maintain that provision of this material falls beyond the scope of your request which was for the telephony risk assessment. I am however happy to provide you with this material as a matter of good customer service...*

*Some of the document remains to be withheld as it provides details of wider IT security controls etc. This exempt material relates to security controls that are peripheral to your original request and as such I consider that I do not need to cite any exemptions under the Freedom of Information Act...I consider... that disclosure of this particular material would be prejudicial to the department's IT security I can confirm that should any further request be made for this particular information that we would wish to continue to withhold it citing the exemptions, at sections 24, 31 and 36 FOIA.*

17. Mr King responded by letter dated 12<sup>th</sup> July 2007 explaining:

*"My interest were somewhat wider than just the telephony system but I had nothing more to go on than these references in making my request".*

Mr King felt that the DWP had failed to extend the section 16 FOIA advice and assistance to him as an applicant and had not followed the section 45 Code of Practice...

*"the limited references were inadequate for me to determine the extent of the available information, and consequently the precise information I required.*

*It was my intention to ask for the fullest possible information, but I was prevented from making clear the scope of my request for the reasons outlined above. The question of whether my request for the full "ACCORD" document is part of my original request or a new request makes no practical difference, and only serves to delay further what has been a very protracted and difficult request for information."*

18. Additionally he notes that titles and headings of withheld paragraphs have themselves been withheld, and that no reasons have been given (as required by section 17 FOIA) for reliance upon each exemption.

19. Mr Cushing replied on 30<sup>th</sup> July 2007 reiterating that the DWP primarily felt that the withheld information was outside the scope of the request, but quoting from the correspondence with the Commissioner explaining

why the DWP felt that the exemptions applied. Mr Cushing accepted that previously withheld headings should have been disclosed and included a schedule of them to remedy that removal.

20. In Mr King's letter to DWP of 13<sup>th</sup> August, he comments that the policy documents he has received:

*“deal with disclosure to third parties, verification of identity and bogus callers. However, they do not address the threat of the appropriation for illegal purposes of personal information provided over the public telephone to your contact centre for making benefit claims, which was my original request for information. I therefore do not believe that my original information request has been dealt with.*

*If the ACCORD document does not contain this information we must establish what document Mrs. Kay Jackson was referring to and also what other documents may contain this information.”*

#### The Commissioner's Decision

21. The Commissioner's Decision dated 14<sup>th</sup> August 2007 was summarized as follows:

*“After having initially refused to disclose the information, DWP later provided the documents it considered relevant to the request. These were taken from a wider report that the authority did not disclose in full as it was considered to be outside the scope of the request. .. The Commissioner... agreed that the information withheld from the complainant is outside of his request and therefore DWP is not required to disclose it. The Commissioner found that DWP failed to respond to the complainant's request within 20 working days and was in breach of section 10 of the Act. The Commissioner also found that as the refusal notice issued was outside of the 20 working days that DWP were in breach of section 17 of the Act.*

22. More specifically the Commissioner defined the scope of the case thus:

- Paragraph 10. *During the course of the investigation DWP disclosed to the complainant all the elements of the “risk assessment” document it holds, which it found fell within the scope of the complainant’s request. His analysis was as follows:*
- Paragraph 29. *In the Commissioner’s view the information withheld does fall outside of the complainant’s request. The documents withheld which reference telephony are strategic policy information related to the set up of the telephony, security or job structure within Job Centre Plus and are not therefore “risk assessments”. The information in Appendix C, whilst referring to risk assessments in relation to security breaches of the computer systems does not relate to a telephony risk assessment.*  
*DWP has now complied with the complainant’s request for the information held on the “ telephony risk assessment”*
- Paragraph 32. *In providing the information, which was originally requested by the complainant, DWP has complied with the requirements of section 1.*
- Paragraph 37. *DWP confirmed it held information relevant to the complainant’s request and disclosed this information to him on 3<sup>rd</sup> July 2007 ”.*

23. The Commissioner’s Decision was recorded as follows:

- DWP had complied with section 1 of the Act as the requested information was provided to the complainant,
- DWP had breached section 17 of the Act,
- DWP had breached section 10 of the Act,
- The Commissioner required no steps to be taken.

#### The appeal to the Tribunal

24. Mr King appealed to the Information Tribunal on 22<sup>nd</sup> August 2007 upon the following grounds:

- i) The ACCORD document does not contain the information requested and consequently the decision notice was wrong to state

that: *“the DWP has disclosed all the elements of this document which it has found relate to telephony risk assessment as requested by the complainant”*.

- ii) The DWP misled Mr King by referring him to a document that it now admits does not relate to his concerns.. Mr King does not feel that the DWP has provided reasonable advice and assistance as required by section 16 FOIA and the Code of Practice issued under section 45.
- iii) The Information Commissioner did not offer any assistance. Despite a promise to keep Mr King informed of developments in the investigation of his complaint, he received no further correspondence until the decision notice, some six months later.
- iv) At the time that the complaint was received by the Information Commissioner, the DWP had not complied with Part I of FOIA. The Commissioner was wrong to allow the DWP time to comply with Part I FOIA during the investigation and wrong therefore to find that the DWP had complied with part 1 of FOIA because the information was provided prior to the drafting of the decision notice.

25. Mr Cushing responded to Mr King’s letter of 13<sup>th</sup> August in a letter dated 6<sup>th</sup> September 2007 detailing the provisions in place to ensure that information remains secure once it reaches a member of the department’s staff, and noting:

*“If your concern is about the integrity of the telephone line between the public telephone and the department’s call centre, then I am sorry that I cannot help you. This is an issue that would need to be addressed to the line provider, presumably British Telecom. “*

He further invited Mr King to provide a clear example of the specific circumstances which are of concern to him, and offered to identify someone in the department who could answer those specifics.

26. The Information Commissioner served a reply dated 13<sup>th</sup> September 2007 resisting all grounds of appeal on the basis that the appeal was without merit. DWP were joined as an additional party pursuant to Rule 7(2) of the *Information Tribunal (Enforcement Appeals) Rules 2005* SI 2005 No.14 on 26<sup>th</sup> September 2007 and also opposed the appeal on the following grounds:

- They have provided all the information which they held which fell within the scope of the request,
- The information which the Department withheld does not fall within the scope of the request. In the alternative the information is exempt information by virtue of sections 44, 36 and 31 of FOIA. (The Tribunal notes that this is the first time that section 44 (prohibition by or under any enactment – in this case the Data Protection Act) has been raised).
- The Department has provided advice and assistance insofar as it would be reasonable to expect the Department to do so. Thus there has been no breach of section 16 FOIA.

#### The questions for the Tribunal

27. The Tribunal's powers in relation to appeals under section 57 FOIA are set out in section 58 of FOIA, as follows:

- (1) If on an appeal under section 57 the Tribunal considers-*
- (a) that the notice against which the appeal is brought is not in accordance with the law, or*
  - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*
- the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.*

- (2) *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.*

28. Upon consideration of all of the material before it, the Tribunal is satisfied that the issues that it is required to determine are:

- i. Was the telephone risk assessment as contained within the ACCORD document covered by Mr King's request for information?
- ii. Did the DWP at the time of the request hold further undisclosed information, which fell within the scope of the request? In particular this includes:
  - a. A different document dealing with the telephony risk assessment,
  - b. Documents addressing Mr King's concerns of the threat of the appropriation for illegal purposes of personal information provided over the telephone to the DWP's contact centre for making benefit claims.
  - c. The 3 documents identified by Mr King in the bibliography section of the ACCORD document.
- iii. If requested information has not been disclosed, can DWP rely upon the exemptions in sections 31(1)(a), 36 or 44 FOIA to withhold the information?
- iv. Should the Commissioner have found that DWP had breached its obligations to advise and assist the Appellant under Section 16 FOIA 2000, in that the Appellant asserts that they had:
  - a) Mised Mr King by referring to the ACCORD document, when that document did not address his concerns,
  - b) Failed to identify documents which would

address his concerns.

- v. Did the Commissioner have a duty to provide advice and assistance? If so did the Commissioner provide inadequate assistance in light of his failure to keep Mr King informed of developments during the currency of the investigation?
- vi. Was the Commissioner wrong in law to find that the DWP had not breached its obligations under Section 1 FOIA because the public authority was granted the opportunity to correct its earlier defaults under FOIA prior to the drafting of the Decision Notice?

29. Questions i), ii) and iv) are questions of fact. Questions iii) and v) are questions of law based upon the analysis of the facts. Question iv), whether the Commissioner was wrong in law to find the DWP had not breached section 1 FOIA is a question of law. The Tribunal may substitute its own view for that of the Commissioner on these issues if it considers that the Commissioner's conclusion was wrong. This is not a case where the Commissioner was required to exercise his discretion.

30. The Tribunal is satisfied that it is not required to determine the following points:

- i. The Information Commissioner's handling of a pre-action protocol for Judicial review sent by Mr King,
- ii. Whether it was appropriate for the Information Commissioner to fail to issue a Decision Notice in Case FS5107137,

The Tribunal's Jurisdiction extends only to consideration of whether the Commissioner's decision on the complaint in this case should be upheld or substituted with a fresh decision.



## Evidence

31. Witness statements from Martin Dillon (team leader of the central DWP policy team responsible for Data Protection and Freedom of Information policies within the Department) and Kay Jackson (District Communications Manager for Jobcentre Plus in Surrey and Sussex) rehearsed much of the correspondence as already set out in paragraphs 2-9 above, in particular the letter from Mrs Jackson dated 30<sup>th</sup> May 2006 stating:

*“Our Contact Centre network has been set up in collaboration with both British Telecom and our own Department’s security specialists. A comprehensive risk assessment has been completed to identify and counter any potential security threats to **our** telephony system.”* and

Mr King’s letter dated 5<sup>th</sup> June 2006 which included the following:

*“Although **your** Contact Centre telephone network may be secure, customers are telephoning from insecure public telephone networks which would not be a secure environment for personal and sensitive information...*

*“Finally, I would be interested to see the risk assessment carried out of **your** telephone system **to which you refer**, and I should be obliged if you would make it available to me”. (emphasis added).*

32. The Tribunal is satisfied from this that:

- Mr King’s request was specifically tied to the information that had already been identified by Mrs Jackson,
- It was not a request for any other risk assessment,
- Mr King knew at the time of his request that the risk assessment he was requesting would not deal with line security of public telephone lines as it purported only to deal with their contact centre telephone network,

- The information he had been given which had prompted his request was neutral as to whether it would deal with security of the information **once it had been received by the contact centre** as it referred to potential security threats to their **telephony system**.

33. Helpful evidence was provided by Thomas Buckle (DWP Security Manager) whose role is to manage the Departmental Security team. He is also the Accreditor for the DWP with responsibility for inter alia security policy and information system security accreditation, he also discharges the role of Department Information Technology Security Officer. He has held these posts for over 10 years (covering the date of the ACCORD document and the date of the request). He was involved in the creation of the ACCORD document, being listed as one of those who approved the ACCORD document and co-authored the introduction.

34. He explained that a System Security Policy (SSP) for the Jobcentre Plus Contact Centres Telephony System (entitled ACCORD NOSP SSP) was created (the ACCORD document) which describes all aspects of security for a system including:

- asset valuation,
- security controls and associated procedures,
- the security risk assessment.

The scope of the system described in the ACCORD document excluded any consideration of security of a telephone call before it reached the call centre, which was beyond the control of the DWP.

35. The section containing the main body of the risk assessment also contained, in three of its paragraphs, details of security controls and facilities that could benefit an attacker and impact on the Department's ability to deliver securely its services. Mr Buckle deemed these out of the scope of the request as they related to security controls and not to

the actual risk assessment. Other areas throughout the document relevant to the risk assessment were disclosed.

36. The withheld information as well as being deemed outside the request would also provide detailed information and insight into the security architecture (hardware and software); specific technical solutions; personnel security counter measure and control, and thus could be of use to an attacker and compromise the correct operation of the system.

37. In his second statement Thomas Buckle dealt with 3 documents referred to by Mr King (as listed in the bibliography of the ACCORD document):

- Telephony Service Security Awareness Briefing Material,
- BT Corporate Security Policy,
- The Business allocation for Advanced Telephony (31 March 2003)

The first 2 of these documents were not held by DWP and without now being able to refer to them Mr Buckle's opinion was that these were not likely to contain a telephony risk assessment. In relation to the third document it did not contain the risk assessment and the only part of the document that dealt with security was disclosed in any event. The Tribunal accepts this evidence.

38. The Tribunal considered Sec 10 security 1.4 headed Project ACCORD as set out in the 31<sup>st</sup> March 2003 document which states:

*"The CONTRACTOR shall conduct a security risk assessment to inform the selection of security controls and countermeasures to be agreed with the AUTHORITY in accordance with BS7799.*

39. We are satisfied from consideration of the ACCORD document itself that it contains the risk assessment that was to be carried out by BT (referred to in Sec 10 para 1.4 of the Business Allocation for Advanced Telephony 31 March 2003), because:

- The ACCORD document shares the title, and the aims of the proposed risk assessment,
- The ACCORD document is in accordance with BS7799 (as stated in paragraph 1.4 of the introduction to the ACCORD document),
- The ACCORD document is authored by BT (who were the Contractors at the time),
- The draft of the ACCORD document that we have is dated 29.9.03 which post dates the 31<sup>st</sup> March 2003 document.

40. Consequently this Tribunal is satisfied that the ACCORD document is the only document held by the DWP which includes a risk assessment in respect of the DWP's telephone system, and that consequently the ACCORD document was the document being referred to by Mrs Jackson, which then became the subject of Mr King's information request.

41. Mr Buckle noted in his first statement that advice available to government security officers at the time the SSP was written supported the use of the Public Switched Telephone Network for the secure transmission of personal information. There is no evidence before us to suggest that this advice was a risk assessment, and it would have fallen outside of the terms of the request in any event (since it was general advice and not a risk assessment of the DWP telephony system).

42. The Tribunal also considered the redacted information. Its analysis of the status of the withheld information appears at paragraphs 53-62 below.

43. The Tribunal is in a position to review the evidence and decide matters of law and fact afresh from the source documents and in those circumstances did not feel that the earlier complaints that Mr King has had against the Commissioner and his allegations of bias were relevant

in the determination of this case.

### Legal submissions and analysis

#### **Was the telephone risk assessment as contained within the ACCORD document covered by Mr King's request for information?**

44. Mr King argues that it is possible that no documents exist which relate to his request. The Tribunal has rejected this contention. Mr King seeks to argue that the ICO is wrong as a matter of fact to focus on the ACCORD document in his decision as his information request was not for the ACCORD document: "My request was for a risk assessment **which related to the concerns I had raised in previous correspondence**" (emphasis added). Whilst that may have been the intention behind Mr King's request, the above constitutes a reformulation of the request and is not in fact that which he had asked for. Whilst the DWP have admitted that the ACCORD document "does not relate to the thrust of your concerns" this is an irrelevant consideration when responding to an information request (see paragraph 65 et seq below).

45. Mr King asserts that the ICO was fully aware in the five months prior to his decision, that the ACCORD document did not address Mr King's concerns. His decision notice was therefore wrong on a question of fact. On the information available to him at the time of the decision the ICO should have exercised his discretion differently. The Commissioner has no discretion on this point. He is bound to consider the information request and if the requestor wishes to have different information from that already requested, his remedy is to make a fresh request in different terms.

46. The DWP argue that irrespective of the Appellant's original concerns, the information request that the Appellant made on 5<sup>th</sup> June 2006 was specific, particular and there was no doubt that he wished to see the risk assessment referred to in the DWP's letter of 30<sup>th</sup> May 2006. The Tribunal concurs with this analysis.

**Did the DWP at the time of the request hold further undisclosed information which fell within the scope of the request?**

47. Mr King does not actively argue that those elements of the ACCORD document that have been withheld by the DWP are within scope or are not liable to be withheld under any of the exemptions relied upon by the DWP. His case is principally that the information contained in the part of the ACCORD document that deals with the telephony risk assessment does not meet his concerns. Nevertheless he wishes the Tribunal to decide whether and to what extent the DWP have failed to comply with Part I of FOIA.

48. The DWP argues that the Tribunal need not consider scope and exemptions as Mr King has stated in his submissions that the ACCORD document “does not contain the information I sought”. The Tribunal understands that there was an inadvertent disclosure of the redacted material with the draft bundle by the ICO, however, there is no evidence before the Tribunal that Mr King considered the “withheld” material before he returned it. Mr King may be relying upon the assertion by the DWP that the document “does not meet his concerns”. Whilst clearly the document does not meet all his concerns, the Tribunal is proceeding from the position that Mr King has not read the material that is before the Tribunal and therefore is not in a position to judge whether it does fall within the ambit of his original request, which is the subject of this appeal.

49. The Tribunal would expect a risk assessment to include the following types of information:

- identification of a potential security risk,
- the assessment of how serious that risk is,
- identification of measures that are (or can be put) in place to combat that risk,
- an assessment of whether to put such measures in place,

- an evaluation of how successful they are likely to be.

50. The Tribunal is satisfied that since the request for information is contained within a larger document, and as Mr King was told that the risk assessment was “comprehensive” that the Tribunal should take a broad approach to what constitutes the “telephony system” and what forms part of the risk assessment. For example the IT supporting the telephony and enabling its use would form part of the telephony system. Similarly “technical solutions to identified security risks” to the telephony would form part of the risk assessment. Consequently the Tribunal finds that whilst most of the withheld information from the ACCORD document is outside the scope of the request, there are parts of the withheld information which do fall within the terms of the request. A consideration of whether this material is disclosable in light of the exemptions relied upon by DWP is set out at paragraphs 53-62 below.

51. Since Mr King’s request referred specifically to the document already identified by Mrs Jackson, which the Tribunal has found is the risk assessment of the telephony contained within the ACCORD document, the Tribunal is satisfied that there are no other documents that fall to be disclosed within the terms of Mr King’s original request.

52. Mr King notes that it is not clear what the status is of the public telephones which the DWP supplies at their own Job centres for public use and whether or not these have been included in any risk assessment. The Tribunal would agree that their status is not entirely clear (are they ordinary BT type telephones or are they some sort of internal calling system) but is satisfied on the evidence of Mr Buckle that such risk assessment by DWP of their telephony system that there has been is contained within the ACCORD document.

**If relevant parts have not been disclosed, can DWP rely upon the exemptions in sections 24, 31(1)(a), 36 or 44 FOIA to withhold the information?**

53. The DWP initially relied upon section 38 FOIA in their initial refusal of the request and then in front of the Commissioner sections 24, 31 and 36 FOIA (although he did not consider any exemptions, finding that all the withheld material was outside of the scope of the request). In front of this Tribunal the DWP no longer relies upon sections 38 or 24 but seeks instead to rely upon sections 31(1)(a), 36 and 44 FOIA.

54. Late reliance on exemptions was considered in *Bowbrick EA/2005/0006* at paragraph 54:

*“In deciding whether there should be a revised notice, and if so on what terms, it is relevant for the Tribunal to take account of a claim by the public authority that an exemption applies in respect of particular information. The Tribunal is in effect exercising the powers of the Commissioner at this point. We ought not to ignore the public authority's claim that an exemption applies, just as the Commissioner ought not to ignore a similar claim if it is raised during his investigation. If the claim is well-founded then the Tribunal ought not to order disclosure, just as in comparable circumstances the Commissioner ought not to order disclosure. “*

55. Whilst there have been subsequent Tribunal Decisions noting that in *Bowbrick* the legislation was new, and the information only discovered during the Appeal process, this Tribunal is satisfied that (adopting the approach set out in *Bowbrick*) both the Commissioner and the Tribunal have the power to consider exemptions raised in front of them for the first time. Whether it **will** consider a recently raised exemption will depend on the facts in each case.



56. In considering the exemption raised under section 31(1) (a) of FOIA this Tribunal notes that it was raised immediately after the ICO indicated that section 38 FOIA was in his view not an appropriate exemption. The reasoning advanced by DWP for relying upon this exemption is very similar to that relied upon in relation to section 38. It would seem unjust to prevent a public authority from relying upon an early identified harm because they have mistakenly applied the same or similar facts and reasoning to the wrong exemption. The Tribunal also considers the interests of justice and the wider impact of a failure to consider a late arising exemption upon persons not party to the case (such as the general taxpayer as well as users of the DWP telephony system). Further whilst the Tribunal expects public authorities to give proper consideration to exemptions when considering an information request, there is a danger that too rigid an approach by the Commissioner or this Tribunal would result in public authorities raising all conceivable exemptions in response to a request, in a “belt and braces” approach in order to preserve their position for later. This would add unnecessarily to confusion upon the part of the information requestor and would add to the burden upon the ICO in relation to time and money spent dealing with complaints to it.

57. Section 31 FOIA states:

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*a) the prevention or detection of crime,*

58. The DWP argue that risks from unauthorized access to [the withheld] information include identity fraud, impersonation, revenge or malicious attacks against individuals, modification of personal information, blackmail or targeting of ethnic minority groups or other vulnerable

groups in society. The Department's computer security experts consider that access to the withheld information in the ACCORD document would provide knowledge of the security and operational management of a live/operational Department system/service. Release of this information would reveal security controls, or the possible lack of them.

59. The Tribunal accepts this evidence and is satisfied that the exemption is engaged as disclosure of this material would prejudice the prevention or detection of crime. Additionally the Tribunal reminds itself that the *Computer Misuse Act 1990* creates certain criminal offences connected with the unauthorised access of Computer systems and that disclosing information that could constitute a "hacker's manual" would also prejudice the prevention of this type of crime.

60. Section 31 FOIA is not an absolute exemption listed in section 2(3) FOIA, and consequently pursuant to section 2(2)(b) FOIA is subject to the public interest test:

*(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—*

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

61. The DWP assert that there is a strong public interest in favour of withholding the information so that:

- the public will have confidence that their information is secure,
- that they will not be the victim of malicious attacks, identify fraud or any other unlawful activities.
- The DWP services that they rely upon will not be impeded or disrupted.

62. The DWP assert that there is “No public interest in disclosure of the withheld information”. This Tribunal disagrees and takes into account that there is a public benefit in disclosure:

- either to promote confidence in the security of the system or
- to enable the public to call for the DWP to shore up their defences and make them more robust.

63. However, the Tribunal is satisfied that the factors in favour of withholding the information under the section 31(1)(a) exemption substantially outweigh those factors which favour disclosure and that such material as was within the scope of the request from the ACCORD document which has been withheld, should not be disclosed.

64. In light of the Tribunal’s findings in relation to section 31(1)(a) FOIA, this Tribunal does not consider the other exemptions advanced.

**Should the Commissioner have found that DWP had breached its obligations to advise and assist the Appellant under Section 16 FOIA 2000, in that the Appellant asserts that they had:**

- a) Misled Mr King by referring to the Accord document when that document did not address his concerns,**
- b) Failed to identify documents which would address his concerns.**

65. The Commissioner argues that since Mr King did not specifically raise section 16 in his complaint it was not before the Commissioner and should not therefore form part of this appeal. The Tribunal feels that this argument is flawed. Mr King had not received any disclosure at the time of the complaint neither had he received the concession from the DWP that the “comprehensive” risk assessment of their telephony (which was mentioned in order to allay his fears), did not meet his concerns, and was to be gleaned piecemeal from a different document which encompassed many other things. Consequently he was not at

the time of his complaint in a position to argue that he should have been given assistance to reformulate his complaint.

66. Under section 47 FOIA :

*(1) It shall be the duty of the Commissioner to promote the following of good practice by public authorities and, in particular, **so to perform his functions under this Act** as to promote the observance by public authorities of—*

*(a) the requirements of this Act, and*

*(b) the provisions of the codes of practice under sections 45 and 46. (emphasis added)*

Whilst performing his functions under this Act (in this case investigating a complaint and coming to a decision) the Information Commissioner has a duty to promote the following of good practice by public authorities. Thus the question of whether the DWP were observing the requirements of section 16 or the provisions of the section 45 Code is something to which the Commissioner will always have regard.

67. Consequently this Tribunal is satisfied that it should consider Section 16 FOIA which provides:

*(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*

*(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.*

68. Mr King argues that he did not ask for the ACCORD document and was guided by the initial response that he had from DWP (which appears to have been of marginal relevance to his expressed

concerns). He argues that the DWP should have followed the Section 45 FOIA Code:

*“In seeking to clarify what is sought, public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as file reference number”.*

69. However, the DWP argue, (and the Tribunal agrees) that the Appellant was clear and specific in his letter of 5<sup>th</sup> June 2006, there was no ambiguity or lack of clarity about his request and that consequently there was no obligation upon them to provide advice or assistance. They rely upon the Information Tribunal case of *Berend v ICO and London Borough of Richmond on Thames (EA/2006/0049 & 50)*

*“The Tribunal is satisfied that the request should be read objectively. The request is applicant and motive blind and as such public authorities are not expected to go behind the phrasing of the request. Indeed the section 45 Code at paragraph 9 specifically warns against consideration of the motive or interest in the information when providing advice and assistance. Additionally section 8 FOIA appears to provide an objective definition of “information requested”.*

*8. - (1) In this Act any reference to a "request for information" is a reference to such a request which- ..*

*(c) describes the information requested*

*There is no caveat or imputation of subjectivity contained within that section.”*

70. This Tribunal concurs with that assessment of the way in which a request should be treated. Similarly Section 1(3) FOIA provides for a situation where the request is not clear and further information is sought in order to comply with the request for information. In this case the Tribunal accepts that the request appeared plain when read objectively by the DWP and that consequently section 1(3) FOIA did not apply.

71. The DWP also argue that they have now sought to address the Appellant's concerns relating to the security of personal information once it has been supplied to the DWP, in effect treating this as a separate information request and providing all the information it holds on this point by its letter of 3<sup>rd</sup> July 2007. In so doing they have actively identified and disclosed information that they felt was relevant to his expressed concerns. They further argue that they do not hold any information relating to the security of the public telephone system. Additionally they have invited Appellant to raise any specific concerns he may have, and provided evidence on the subject where he has engaged with them (e.g. the three documents listed in the bibliography of the ACCORD document).

72. Mr King also argues that such advice and assistance as he has now received was provided late and only occurred after the complaint was lodged with the Commissioner and in some respects since the appeal was lodged with the Tribunal. The Tribunal has already found that in the particular circumstances of Mr King's limited and clearly defined request section 16 FOIA and the section 45 Code did not apply to the request that is the subject of this appeal, and that consequently such advice and assistance was provided outside the FOIA, however, the Tribunal notes that the DWP did not appear to address the issue of disclosure comprehensively until the case was with the Commissioner. Whilst the Tribunal does not find that the mistaken reliance upon section 38 was deliberate or done in bad faith, the Tribunal observes that:

- no consideration appeared to be given to redaction or scope until a very late stage,
- there is no evidence before the Tribunal that Mr King's explanation of why he felt that section 38 was being mis-defined and wrongly applied was ever actively considered during the review process.
- neither was the issue addressed of Mr King having been misled (reference to the ACCORD document when that document did not address the thrust of his concerns) until the case was before the

Commissioner.

**Did the Commissioner have a duty to provide advice and assistance?  
If so did the Commissioner provide inadequate assistance in light of his  
failure to keep Mr King informed of developments during the currency of  
the investigation?**

73. Mr King does not argue that the Commissioner has a **statutory** duty to provide advice and assistance, but rather that it would be *“proper and fair for the Information Commissioner to assist the DWP and myself to see if the information I required was available elsewhere, or to focus my request in such a way that it could be complied with without recourse to exempt information.”* Mr King further argues that as the ICO failed to keep him informed between February and August, he was not in a position to know what specific documents were available.

74. Nicole Duncan (Head of FOI Complaints) apologizes in her letter of 12<sup>th</sup> October 2007 for not having written to Mr King. The ICO concedes that it would have been preferable if in light of the undertaking given to him by Ms Cragg in February 2007 Mr King had been notified as to how the case was progressing prior to the issuing of the Decision Notice. However, the ICO maintains that failure to take such a step does not amount to an error of law and does not in any event operate to flaw the decision reached by the Commissioner.

75. This Tribunal agrees with the Commissioner’s analysis. Further the Tribunal has not been pointed to any authority to suggest that the Commissioner’s responsibility goes any further than the duty set out in Section 47 FOIA (as set out in paragraph 66 above) to ensure that the public authorities are fulfilling their obligations. More specifically:

- The robust case handling policy (see paragraph 80 et seq below) which is the subject of much criticism by Mr King, is the mechanism by which the ICO sought to assist the DWP to see if the information was available and to focus the request in such a way that it could

be complied with without recourse to exempt information (by consideration of scope and redaction).

- Knowing what specific documents were available in this case would have been irrelevant to the complaint before the Commissioner the remit of which was the initial (in this case restricted) information request.

**Was the Commissioner wrong in law to find that the DWP had not breached its obligations under Section 1 FOIA because the public authority was granted the opportunity to correct its earlier defaults under FOIA prior to the drafting of the Decision Notice?**

76. Under FOIA, Section 1 provides

*(1) Any person making a request for information to a public authority is entitled-*

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

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

*(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.*

77. Section 10 provides that:

*(1) ... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.*

78. Although the Tribunal has come to a different conclusion from the Information Commissioner on the facts and found that the DWP do hold information within the scope of Mr King's request, which has not been disclosed, the Tribunal is satisfied that this is properly withheld in reliance upon section 31(1)(a) FOIA (see paragraph 63). As such the change in reason for the withholding of the information does not affect



the factual basis for considering the section 1 FOIA breach. It is accepted by all parties that at the date that Mr King lodged his complaint with the Commissioner (more than 4 months after his initial request) he had not had disclosed to him material which the DWP held which fell within the scope of his request and to which no exemption related.

79. The Information Commissioner in his submissions proposes amending the wording of paragraph 39 of the Decision Notice to read: *“Compliance with section 1 of the Act as the requested information was provided to the Complainant, albeit that such information was disclosed late and only after a complaint had been submitted to the Commissioner”*.

The Tribunal is not minded to follow this course. The Tribunal is not concerned with altering the drafting of Decision Notices where there is no error of fact or law and there is no provision with Section 58 FOIA to enable such redrafting.

80. The Commissioner argues that:

- a. It is apparent from the body of the decision that the information was provided after Mr King had applied to the Commissioner for a decision,
- b. The information was provided by the time that the decision was drafted and consequently the breach was not one of failure to comply with section 1 FOIA, but failure to comply with section 10 FOIA.
- c. It is entirely in keeping with his statutory obligations that he should (following receipt of a complaint):
  - o conduct an investigation with the objective of discovering whether the relevant public authority has failed to comply with its obligations under FOIA.

- Where he discovers information has been unlawfully withheld, exploring with that authority whether it is prepared to disclose that information forthwith in the absence of a formal Decision Notice
- There is nothing in any statute to render this conduct unlawful.
- It is consistent with the Commissioner's obligations to ensure that information which is disclosable under FOIA is disclosed in a timely fashion,
- Section 47 FOIA imposes a duty to promote the following of good practice by public authorities.

81. The Commissioner also argues that he is acting in the spirit of the "Overriding objective" contained in the Civil Procedure Rules. This objective relates to dealing with cases "justly" and includes aspects of speedy resolution, proportionate resource allocation and case management. Whilst the Commissioner is not bound per se, he argues that it is entirely proper that wherever possible the Commissioner should handle complaints in a way that is consistent with that objective.

82. The Appellant's arguments are two fold:

- firstly that the statute permits the Commissioner to investigate a case by way of an information notice and then record his findings in a decision notice. He objects to the ICO's "robust case handling policy" as there is no provision for the Commissioner to substitute the statutory requirements allowing him to take an informal approach "exploring" whether disclosure can be achieved and giving time for a public authority to remedy their default prior to issuing a decision notice.

- Secondly that the Commissioner should be considering the facts as they existed at the date that he received the complaint and not the date that he drafted the decision notice.

83. Section 50 FOIA sets out the provisions for applying to the Commissioner for a decision:

*(1) Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority **has** been dealt with in accordance with the requirements of Part I.*

*(2) On **receiving** an application under this section, the Commissioner **shall make a decision** unless it appears to him— [that certain exceptions apply]...*

*(4) Where the Commissioner decides that a public authority—*

*(a) has failed to communicate information, or to provide confirmation or denial, in a case where it is required to do so by section 1(1), or*

*(b) has failed to comply with any of the requirements of sections 11 and 17,*

***the decision notice must specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken...** (emphasis added)*

84. The wording of section 50 supports Mr King’s contention that the Commissioner should be considering the facts as they existed at the date that the Commissioner received the complaint. The complainant is applying for a decision whether the request has been dealt with in accordance with part I (as opposed to “is being dealt with”). The use of “has” indicates that the facts are historic and not evolving and the

Commissioner is being asked to consider what has already happened in determining whether there has been a breach of section 1 FOIA.

85. Mr King relies upon section 50(2) as evidence that (in normal circumstances) the ICO is required to make his decision **on receipt** of the complainant's application and that consequently the evaluation of facts should be immediate and not postponed. The Tribunal feels that the use of "receipt" in this context relates more to the fact that the Commissioner is not required to investigate and make a decision in a case under section 50 FOIA until he has received an application (rather than acting of his own motion). Mr King concedes that the Commissioner will need to investigate a matter in order to ascertain the facts upon which to make his decision, and in that respect accepts that even on his reading "on receipt" cannot mean an immediate decision.
86. The provisions for the decision notice to specify steps which must be taken by the public authority in order to comply with their obligations does not take either argument further. It is clear that both parties accept that Decision Notices can be issued where there are no steps to be taken (on the preferred reading advanced by both Mr King and the ICO whether a breach of section 1 was recorded or not, there would be no steps required of a public authority where disclosure was made after the complaint but before the Decision Notice was issued.)
87. The Tribunal agrees that in cases of delay there are separate breaches which can be recorded under sections 10 and 17 FOIA, but is satisfied that a failure to provide disclosable information by the date of a complaint to the Commissioner should be properly categorized as a breach of section 1 FOIA as well as a breach of section 10 or 17 FOIA.
88. The Tribunal is satisfied therefore that the wording of the statute supports Mr King's analysis that the Commissioner should make a decision upon the facts as they were when he received the complaint not when he came to write the decision. This should not be taken to mean that the Commissioner is precluded from considering fresh

matters arising during the currency of his investigation, such as the discovery of fresh information or the raising of fresh exemptions (see paragraph 52 et seq above). If (as occurred here) disclosure happened during the investigation that can be reflected in the fact that notwithstanding the breach of section 1(1) FOIA, the Commissioner does not require any steps to be taken to remedy the breach.

89. The Tribunal notes that there is substantial inconsistency between the Commissioner's decision notices on this point, with some only recording breaches of section 10 and others recording additional breaches of section 1. The Commissioner's approach was considered in Adlam v IC EA/2006/0079 where a public authority had provided an honest, reasonably held, but nonetheless erroneous answer to an information request outside the 20 day limit. That Tribunal considered that the obligation set out in section 1(1) was "*an absolute one*" and observed that:

*"the Tribunal finds it difficult to see why the Commissioner has restricted himself only to alleged breaches of sections 10 and 17 alone as being the consequence of the Treasury's letters in issue in September. The Tribunal finds that it must logically follow that if such breaches do attach themselves to the two letters in 2005 in question, it necessarily follows that the letters entailed a breach of the overriding obligation in section 1(1)".*

90. The Tribunal does not accept Mr King's contentions that the Commissioner's informal approach to investigate a case is ultra vires. It is accepted that the Commissioner will be required to investigate a complaint (Since Section 58(2) FOIA allows the Tribunal to review a finding of fact by the Commissioner, the Information Commissioner must find facts, therefore there must be an investigation.) There is no mandatory format for investigation set out in FOIA. Contrary to Mr

King's assertion the Commissioner is not bound to issue an information notice if he requires further information from the public authority:

*51(1) If the Commissioner—*

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

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

91. Mr King further argues that the section 47 FOIA duty is “a general one” and forms no part of the procedures specified in Part IV of the FOIA. However, it is clear that the Commissioner's duty is:

*47.. so to perform his functions under this Act as to promote the observance by public authorities of—*

*(a) the requirements of this Act..*

Consequently this duty informs the way in which he performs the procedures set out in Part IV of the Act.

92. Mr King argues that “*exploring with the public authority whether it is prepared to disclose that information forthwith in the absence of a formal Decision Notice*” does not form any part of FOIA and adds nothing that cannot be achieved by the issue of a decision notice. The Tribunal disagrees and finds that there is no conflict between the statutory provisions of FOIA and the reasoning given by the Commissioner at paragraphs 80.c and 81 above. The Commissioner has a duty to ensure that disclosure is made in appropriate cases. “Exploring” is more flexible than the issue of a decision notice. It may be that by discussing redaction or scope (as in this case) or the

inapplicability of certain exemptions a public authority will voluntarily disclose information that had been previously withheld. Equally if as a result of being alerted to their inappropriate reliance upon an exemption, the public authority seek to raise a fresh exemption (as happened in this case), the Commissioner is in a position to consider that in his Decision notice, potentially avoiding the cost, inconvenience and delay of an appeal to the Tribunal.

93. Mr King has categorized this informal approach between the ICO and the DWP as “*collusion*”. The Tribunal does not accept that assertion. As a result of the Commissioner’s intervention the majority of the information that was the subject of the request was disclosed, and the Commissioner issued a Decision Notice, which recorded the failings of the DWP.

#### Conclusion and remedy

94. The Tribunal is satisfied that the telephone risk assessment as contained within the ACCORD document was the subject of Mr King’s request for information, and that no other documents fell to be disclosed under the request.

95. At the time of the request the DWP did hold further undisclosed information which came within the scope of the request (namely some of the redacted parts of the ACCORD document) however, the exemption in section 31(1)(a) FOIA is engaged and the public interest lies in withholding the information.

96. The DWP did not breach its obligation to advise and assist the Appellant under section 16 FOIA as the request was specific and readily identifiable. There was no duty upon the Commissioner to provide advice and assistance to the Appellant.

97. The Commissioner was wrong in law to find that the DWP had not breached its obligations under Section 1 FOIA because at the time

when the complaint was lodged section 1 FOIA had not been complied with.

98. The Tribunal is satisfied that all information within the scope of the request that is not covered by an exemption has now been disclosed, accordingly the Tribunal does not require any steps to be taken by the Department of Work and Pensions.

99. Our decision is unanimous.

Deputy Chairman

Date 19<sup>th</sup> March 2008