



# Freedom of Information

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## Headlines:

- Job applicants' data not exempt, p.14
- Commissioner fails to recognise personal data, p.14
- Tribunal orders release of Iraq dossier, p.15
- President Obama's 'new era of openness', p.16

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## Results reveal frenzy of misuse of the personal data exemption

*Freedom of Information* has counted seven recent findings of 'complaint upheld' (including findings of 'partially upheld') by the Information Commissioner's Office in relation to the section 40 ('personal data') exemption in the Freedom of Information Act ('FOIA').

The findings come from an analysis of Decision Notices issued during December 2008 and January 2009. One of the examples of section 40 misuse was by the Information Commissioner himself (see page 14 of this edition).

Public authorities who were subject to Decision Notices with 'complaint upheld' verdicts, included the Department for Health (on two separate occasions — Decision Notices dated 15th and 22nd December), and the Office for Standards in Education (on 1st December 2008).

Only two public bodies, the Children and Family Court Advisory and Support Service and the Department for Business, Enterprise and Regulatory Reform, applied the exemption correctly in the relevant period (Decision Notices both dated 15th December).

Recent examples of misuse of the exemption fall into two categories: the incorrect identification of the relevant subsection of section 40, and misapplication of section 40(2).

The personal data of applicants of an information request are exempt under section 40(1) of the FOIA. These requests should instead be dealt with as subject access requests under the Data Protection Act 1998 ('DPA'). Section 40(2) FOIA provides for a qualified exemption in relation to requests that involve third party data. Generally, public bodies

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## Flurry of procedural guidance

The Information Commissioner's Office has produced three new guidance papers to assist public authorities with their obligations under the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIRs').

A new guidance paper dated 9th January is designed to assist public bodies in responding to information requests from people using pseudonyms or fictitious names to disguise their real identity.

Section 8 FOIA defines information requests as requests that are in writing, which state the name of the applicant and an address for correspondence, and describe the information requested. The paper, entitled 'valid request — name and address for correspondence', recommends that public authorities treat requests where the real name of the requester has not been used, as invalid. It urges a common sense approach, and advocates that good practice would

be for the public authority to consider whether it is happy to release the information despite receiving a technically invalid request.

New guidance on providing 'advise and assistance', dated 17th December, is designed to assist public authorities in providing advice and assistance to individuals making requests for information under the FOIA and EIRs. The guidance recommends early contact

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