IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

Case No. EA/2015/0048

ON APPEAL FROM:
Information Commissioner's
Decision Notice No: FS50550640
Dated: 17 February 2015

Appellant: REUBEN KIRKHAM

Respondent: INFORMATION COMMISSIONER

Heard at: Newcastle SSCS

Date of hearing: 8 July 2015

Date of decision:

Before
CHRIS RYAN
(Judge)
and
PIETER DE WAAL
DAVE SIVERS

Attendances:

The Appellant appeared in person
The Respondent did not appear and was not represented.

Subject matter: Cost of compliance and appropriate limit s.12

IN THE FIRST-TIER TRIBUNAL **Case No. EA/2015/0048**
GENERAL REGULATORY CHAMBER

PRELIMINARY DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses all the Grounds of Appeal presented by the Appellant (for the reasons set out in its Reasons for Decision below) save for his challenge to the estimate of costs relied on by the Public Authority, Cambridge University. The Tribunal makes no determination of that issue, at this stage, but directs the Information Commissioner to seek from Cambridge University further information, indicated by the questions set out in the annex to the Reasons for Decision. The Information Commissioner is directed to report back to the Tribunal within 21 days on his progress in securing the information being sought and the Tribunal will make further directions at that stage on both the further pursuit of information (if needed) and a timetable for additional submissions on points arising from it.

REASONS FOR DECISION

<u>Background</u>

1. The Appellant is a PhD student at Newcastle University with particular interests in computer science and disability issues. In June 2014 he wrote to several universities seeking information about the manner in which each one had addressed equality and diversity issues in proposals they had submitted to the Engineering and Physical Sciences Research Council ("EPSRC"). The proposals had been sought as part of a project for the allocation of substantial funding to higher education institutions for doctoral training in relevant topics. EPSRC required each institution to include in its application for funding information about its plans for addressing equality and disability issues faced by students and researchers involved in the proposed project, in compliance with obligations imposed by the Equality Act 2000 ("EA").

2. One of the institutions approached was Cambridge University ("the University"). It was public knowledge at the time that the University had submitted a total of 13 separate proposals. No other University had submitted more than 8 proposals.

3. The terms of the request submitted to the University, on 12 June 2014, were as follows:

"I write to make an information request under the Freedom of Information Act (2000), related to equality and diversity.

Specifically, I am interested in proposals completed by academics and staff in your University in relation to the EPSRC Doctoral Training Call. In the second round, a subset of outline proposals were [sic] *identified as being taken forward for a full proposal* [as listed on the EPSRC website].

In relation to each proposal in that list, I should be grateful if you could provide:

1. The section(s) of the proposal which were directed at Equality and Diversity, *noting EPSRC's detailed instructions which required this to be explicitly considered.*

2. Any drafts of the section(s) noted in 1.

3. Any email correspondence in relation to these section(s), including any advice provided by the University explicitly in respect of this proposal.

4. Any correspondence with EPSRC in furtherance of this matter (equality and diversity) in relation to this specific call, or otherwise relied upon for writing the proposal.

Please note that you may, if it is easier or more efficient for you to do so, provide the proposal and its draft in totality.

I should be grateful if you could fulfil this request within the 20 day time limit, as described under the Act. If you have any queries, or would like to seek further clarification, please do not hesitate to contact me."

4. As the Request itself made clear, it was made under the Freedom of Information Act 2000 ("FOIA"). Section 1 of the FOIA imposes on the public authorities to whom it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA.

5. One reason for refusing a request for information is provided by FOIA section 12, which provides that an information request may be refused if *"the cost of complying with the request would exceed the appropriate limit."* The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") set the *"appropriate limit"*, as applicable to the University, at £450. In estimating whether responding to an information request will exceed that limit a public authority may apply a notional hourly charge of £25 to

the time spent complying with it but (under regulation 4(3)) may take account only of the time which it reasonably estimates it will take in:

> *"(a) determining whether it holds the information,*
> *(b) locating the information, or a document which may contain the information,*
> *(c) retrieving the information, or a document which may contain the information, and*
> *(d) extracting the information from a document containing it."*

6. The University relied upon FOIA section 12 to refuse the information request, although it indicated that if a new information request were submitted, limited to just the first element, it was likely that a response could be provided within the costs limit.

7. It follows from the application of the Fees Regulation to the facts of this case that, if the task of complying with the information request in respect of each of the 13 proposals submitted to EPSRC by the University involved more than 18 hours of staff time, in total, the cost cap provided by section 12 would have been exceeded. The average time available to work on each proposal, therefore, would be a little under one and a half hours.

8. The University maintained its refusal, following an internal review conducted at the Appellant's request. Thereafter the Appellant lodged a complaint with the Information Commissioner about the manner in which his information request had been handled and, following an investigation, the Information Commissioner issued a decision notice on 17 February 2015 in which he concluded:
    a. that the cost estimate relied on by the University was reasonable, despite the case to the contrary put to him by the Appellant, and that it had therefore been entitled to refuse the information request; and
    b. that the University had not breached its obligation (under FOIA section 16) to provide the Appellant with advice and assistance in respect of his information request.

<u>The Appeal to this Tribunal</u>

9. The Appellant lodged an appeal against the Decision Notice on 23 February 2015.

10. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the

process, review any finding of fact on which the notice in question was based. Our jurisdiction does not extend beyond those issues.

11. The Appellant elected to have his appeal determined at a hearing, rather than on the papers although, in the event, the Information Commissioner chose not to attend and invited us to rely on his written submissions. Various case management directions were made, before the appeal came on to be heard, regarding, among other things, the joinder of additional parties and the content of the bundle of papers provided to us for the hearing. However, the Appellant expressed himself content at the hearing with the materials which the Tribunal panel had at its disposal, although he remained concerned that at least one other party should have been joined.

12. The Notice of Appeal was accompanied by written submissions. In the introduction to those submissions the Appellant listed his grounds of appeal in the following terms:
    i. The Information Commissioner made several errors of fact in the Decision Notice, evidencing a misunderstanding of parts of the Appellant's case.
    ii. The Decision Notice did not address the failure by the University to comply with the Public Sector Equality Duty, (imposed on it by the EA), in respect of the supply of information.
    iii. The Information Commissioner had himself breached the EA.
    iv. The investigation carried out by the Information Commissioner had lacked rigour in that the University had been allowed to change its position from time to time and the Appellant had not been given an opportunity to comment on the final position the University adopted in respect of its cost estimate.
    v. The calculations relied upon by the Information Commissioner in concluding that a reasonable estimate of costs would exceed the appropriate limit did not reflect the reality of the search strategy required to comply with the information request.
    vi. The University appeared to breach the Data Protection Act 1998 *("DPA")* in the search methodology it proposed.

    Addressing all of these issues occupied the Tribunal for a full day. We find ourselves, as a result, able to dismiss all of the grounds relied upon except for ground v. and regret that much time was wasted, both in pre-reading and on the day, considering the other grounds that were untenable and largely irrelevant. We address each ground in the order set out above.

<u>First Ground of Appeal – Errors of Fact in Decision Notice</u>

13. The Appellant drew attention to a number of passages of the Decision Notice which he believed contained errors of fact. He did not pursue any of the specific criticisms during the hearing and it seems to us, in any event, that they each relate to the language used by the Information Commissioner in recording the approach he adopted to the

cost estimate. Properly, therefore, they should form part of ground v. below.

Second Ground of Appeal – Breach of EA

14. The Appellant expressed suspicion that the University did not comply with its obligation, as a public authority under EA section 49, to exercise its functions with due regard to the need to *"eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act*" or to address equality concerns in a structured and effective manner. He stressed the significance placed on this issue in the EPSRC's procedure for granting funding and argued that, had the University complied with EA:

> "… *there would be a clear route towards fulfilling my request and providing the information that I asked for. Indeed most of this would likely already be compiled, or alternatively, they would be able to give me effective guidance under s.16 so I could confirm compliance."*

15. No evidence was presented to us in support of the Appellant's suspicions and, when pressed on the point, he was able to present no basis in fact for the allegation of breach beyond his own opinion that academics and the institutions where they work have a poor record of handling equality and diversity issues. Even allowing for the Appellant's personal interest in this field, and the expertise he may well have developed, this is no basis on which we may draw conclusions.

16. Even if the Appellant had provided us with evidence of breach by the University we could see no cogent link to an argument of error in the Decision Notice. He sought to argue that the Information Commissioner should have required the University to adjust its estimate so as to exclude the cost of any activity made necessary by the failure to maintain and compile its records in a manner that would satisfy the Appellant's view of what an EA compliant record system would look like. He did not attempt to explain how this Tribunal could be expected to carry out the task of assessing the degree of compliance (a matter on which it has neither jurisdiction nor specialist expertise) or the impact of any non-compliance on the cost of responding to an information request.

17. The estimate of costs required by the Fees Regulations should, in any event, be based on the record system that the public authority actually has, not one which it might have if it had been more efficient or more compliant with law and regulation.

18. It follows that we reject this Ground of Appeal. It has no basis in law and is, in any event, not supported by any evidence.

19. The Appellant made further submissions on the general issue of the application of EA. He suggested that EA imposed an obligation on the University to disclose information if it was "just and reasonable" for it to do so in order to comply with EA and that this should override the detailed rules on public authority disclosure imposed by FOIA. No comprehensible justification was given for the general language of one statute overriding in this way the detailed and targeted language of another. Nor was any evidence presented to us about any conduct of the University that might bring the EA into play, beyond the Appellant's personal views that those working for it were both incompetent and dishonest. We were, in fact, unable to discern from the Appellant's submissions any equality or diversity issue arising on the facts of this case to support his arguments. We were invited to study a lengthy academic paper[1] on the suggested failure of judges in the US court to understand scientific or technical issues or to interpret them correctly. We found no support in that article for the Appellant's contentions and conclude that the argument is simply untenable.

20. The Appellant also argued that a public authority should have regard to its obligations under EA when exercising the discretion given to it (by FOIA section 13) to provide information for a fee in circumstances where it might have grounds to refuse disclosure under section 12. We were, again, not provided with any reason to connect the argument to the facts of this case. Although we make no ruling on the point we can envisage the possibility of EA coming into play where the individual requesting information from a public authority is at a disadvantage arising from a disability. However, the fact that equality and diversity constituted the subject matter of the information request could not, on its own, lead to the discretion given to a public authority under section 13 being constrained in the way the Appellant suggested. We do not, in any event, have any jurisdiction to determine the point. If a public authority did breach the EA in the way in which it exercised its discretion, it would be the County Court, and not this Tribunal, that would have jurisdiction to rule on the point.

Third Ground of Appeal – Information Commissioner's disregard of EA

21. The Grounds of Appeal included this sentence:

> *"… I strongly urge the Tribunal, pursuant to its own obligations as a Public Authority, to make appropriate and effective recommendations of the* [Information Commissioner] *in order to begin to address the serious issue that I believe I have identified".*

[1] Michael I Meyerson and William Meyerson, *Significant Statistics: The Unwitting policy Making of Mathematically Ignorant Judges* 37 Pepp. L. Review. 3 (2010)

It is very clear from that quotation that, whatever, the arguments supporting the Appellant's proposal, the FOIA gives this Tribunal no jurisdiction whatsoever to involve itself in the day to day operations of the Information Commissioner's office. The suggestion was, in any event, supported by nothing more than the Appellant's suspicion that the Information Commissioner's procedures may not give to information requests the consideration of equality issues that he, the Appellant, would regard as appropriate. It is not for this Tribunal to lend support to the Appellant's unsupported pontification on the way in which he believes the Information Commissioner may breach the EA when there is no jurisdiction to do so and no comprehensible argument (let alone evidence) to support the point.

Fourth Ground of Appeal – conduct of the investigation

22. We explain below, under the Fifth Ground of Appeal, how the case relied on by the University was presented. It is clear to us that what the Appellant characterised as a shifting of the University's position, in fact reflected the Information Commissioner's approach of testing the reliability of the cost estimate relied on. He required the University to provide additional information to enable him to satisfy himself that it had approached the task of estimating costs in a correct manner and that the figures that emerged represented a reasonable estimate. The Appellant in effect suggested that the Information Commissioner had colluded with the University to devise a set of figures that would enable the information request to be rejected. No evidence was presented to support these serious allegations and we can see in the contemporaneous exchanges between the University and the Information Commissioner, no justification whatsoever for making them.

23. Our role, in any event, is to review the Information Commissioner's decision notice, not the means by which he carried out the investigation which preceded it. If there are flaws in an investigation they may lead to errors in a decision notice, but it is not open to this Tribunal to review the process of the investigation just for the sake of it.

24. The Appellant did not draw our attention to any error in the Decision Notice that was said to result from the allegedly faulty process adopted and did not arise under any of the other grounds of appeal. Accordingly this ground of appeal does not merit further consideration.

Fifth Ground of Appeal – cost estimate not compliant with FOIA section 12

25. It is something of a surprise to find that the question of whether the cost estimate relied on by the University actually complies with FOIA section 12 should arise only as the fifth, out of six, grounds of appeal relied on by the Appellant. The section is, after all, fairly straightforward in its structure and language and its examination on

appeal did not justify the diversions and irrelevancies which the Appellant has required the Tribunal to examine under his other grounds of appeal.

26. Notwithstanding the relative simplicity of the concept underlying section 12 it is necessary, in the particular circumstances of this case, to trace the stages in which the University presented, and then sought to justify, its cost estimate.

27. In response to the Appellant's information request the University stated that it had submitted a total of 13 proposals to EPSRC. It pointed out that questions 2 – 4 of the information request were expressed in broad terms and that emails relating to the preparation of the relevant section of each proposal were likely to have been sent to and from dozens of individual researchers and administrative staff and were not collated centrally. On that basis the University estimated that complying with the information request would use up more than the 18 hours available under the Fees Regulations. No more detailed calculation was provided at that stage.

28. The Appellant challenged the response on two bases. First, he pointed out that the eleven other institutions he had sent an identical information request to had complied with it and that the maximum number of documents provided by any one of those institutions was just 36. Secondly, he challenged the estimate for its vagueness and suggested that the performance of some simple email searches would have at least enabled the University to establish what information it held and that responding to the first question in the information request should have taken very little time (especially because, as he had made clear, he would have been happy to receive the entire proposal and not just the section with which he was particularly interested).

29. In respect of the email search the Appellant proposed a particular period of time to be covered (that between EPSRC notifying institutions that their bid had succeeded in the first round of assessment and the deadline for submitting a second round proposal). He also suggested a structure of keywords for, and the suggested scope of, an electronic search. He made it clear that:

> *"The search for information need not be so exhaustive as to examine every nook and cranny of the University's documentation; such a policy would effectively exempt the University from the FOI legislation almost in totality."*

30. The University carried out an internal review of its decision and wrote to the Appellant on 6 August 2014 with the outcome of that review. The letter acknowledged that the Appellant had been entitled to expect a more detailed explanation than had been provided. There followed a long list of office holders who would need to search for draft documentation and communications, both hard copy and in electronic

format. It was estimated that this would involve a total of 50 individuals for each of the 13 bids and that this process would have accounted for 25 hours of staff time. The letter did not address the possible application of the email search protocol suggested by the Appellant.

31. During the course of the Information Commissioner's investigation of the handling of the information request the University defended the methodology behind its original estimate, but explained that it had subsequently gone further and had carried out a sampling exercise based on the records held by two of the thirteen individuals (each described as a Principal Investigator) responsible for the preparation of a bid. This, it said, suggested that the 30 minute calculation for each search, as relied on previously, had been an underestimate because the individuals estimated that it would take many hours to carry out the document by document analysis of the results of any keyword search of email accounts and electronic files to see to what extent, if any, they fell within the scope of the information request. The University laid stress on the fact that the information requested was not held or labelled in a systematic or consistent manner and would therefore present additional challenge to those seeking to access information by means of electronic searches. It also drew attention to the fact that its sampling exercise had covered only the Principal Investigators and not the other individuals who were involved in the drafting process.

32. Later during the investigation, apparently following a telephone conversation with the Information Commissioner's office, the University provided additional information about the sampling exercise it had carried out. It explained that the first Principal Investigator had retained all of his emails from the period of the development of the proposal for which he was responsible. He had approximately 900 emails between himself and the two core colleagues who were most actively involved in drafting the document. The University then said:

> *"Automated searches of these have revealed that around 15% (135) of these emails are directly relevant to the drafting process, while a further 15% (135), while not directly relevant to this process, nevertheless could contain information sought by Mr Kirkham.* [The first Principal Investigator] *also holds around 600 emails between himself and the ten other members of staff (both academic and support staff) who were most closely involved in the proposal's development."*

This was the first occasion on which the University had mentioned having carried out any electronic search, despite the Appellant's mention of it in his first written response to the rejection of his information request. The letter went on to argue that it would take 5 minutes to assess whether any relevant information was contained in each of the 370 emails filtered from the totality of those passing between the first Principal Investigator and the two colleagues mentioned. This it said would take one person 22 hours.

33. The University went on to explain that the first Principal Investigator also held an electronic folder from the period of the development of the relevant proposal which contained 159 documents. It estimated that it would again take 5 minutes to review each document to see if it was a draft of the relevant proposal or otherwise fell within the scope of the information request. That would account for a further 13 hours.

34. The second Principal Investigator covered by the sampling process had deleted most of his emails from the relevant period but:

> "*Automated searches of his active email folders have revealed a very small number of relevant emails, though* [he] *recalls that there was extensive email discussion of the topic of equality and diversity with regard to* [the] *proposal."*

The University also explained the process which it would have considered appropriate for tracing relevant emails from its archived back-up tapes (which is commented on in the Sixth Ground of Appeal below), but proceeded with its sample estimate on the assumption that the search would bring to light a minimum of 100 emails. Based on the same 5 minute assessment referred to above it estimated that this would account for a further 8 hours of one person's time.

35. The University went on to explain that the second Principal Investigator had confirmed that the development of the proposal for which he was responsible had been carried out in part at meetings, at which informal handwritten notes had been made by him and the four academic colleagues who were co-operating with him. Such notes, it was said, would have been held in notebooks which would need to be searched on a page-by-page basis, a task which was estimated to take at least 3 hours.

36. In response to a further communication from the Information Commissioner, during the preparation of his response to this appeal, (and therefore well after the date of his Decision Notice), the University acknowledged that it might have based its sampling exercise on a period of time that was more extensive than was required by the terms of the information request. However, it argued that the work involved would still have been so extensive that the cost limit would have been exceeded. It also sought to justify the number of documents emerging by drawing attention to the collaborative style of working adopted by the Principal Investigators, the highly decentralised nature of the University, especially where a project involved members of its academic staff, and the broad terminology adopted by the Appellant in his information request.

37. The Information Commissioner referred in his Decision Notice to the detailed estimates summarised above, as well as the Appellant's suggestion that the relevant information could be extracted in a much simpler manner by running an appropriate keyword search across the University's system. He concluded that, while sympathetic to the Appellant's concerns, he had "*no evidence that the University's explanation for its estimates are inaccurate*" and accordingly found that its estimate was not unreasonable. Accordingly it had, in his view, complied with FOIA section 12.

38. There are a number of issues, on both sides of the case on this issue, which cause us some concern.

39. Those arising on the Appellant's side of the case are as follows:
    a. The Appellant has proceeded on the basis that an electronic search was all that would have been required to locate relevant documents and extract from them information falling within the scope of the precise terms of his information request. We think that, although such an electronic search may well have reduced the number of documents to be reviewed to a more manageable number, it would almost certainly have been necessary, in addition, to carry out a visual inspection before a response to the information request could have been finalised.
    b. We are also conscious that, with a total of 13 proposals to be taken into consideration, the Appellant will not succeed unless he establishes, in effect, that responding to his information request would have taken no more than one and a half hours per proposal. This means that, while it may be possible for him to justify some of his criticisms of the University's methodology, he must establish a high level of over-estimation before his appeal has any prospect of succeeding.

40. On the other hand, we are concerned about the following aspects of the University's estimate and the Information Commissioner's defence of it:
    a. We see no reason to attribute any time to the task, referred to in paragraph 35 above, of searching through individual notebooks. The information request asked about drafts of the proposal and the final document. The Appellant also made it clear that he did not require the University to search in "*every nook and cranny*" (see paragraph 29 above). While it is conceivable that an individual's personal notebook may record some of the factors taken into consideration at the early stages of planning a proposal, we do not think it appropriate to treat that type of record as falling within the scope of the information request. The reality is that, at some stage in the process, someone in the team planning the proposal would have prepared a draft and circulated it to his or her colleagues. There is no reason to treat any record of the thoughts and ideas preceding that stage as falling within the scope of the request, any more than it would be

appropriate to include any subsequent notes on points arising from the first or subsequent drafts. We are able to conclude at this stage that the part of the University's estimated costs attributed to searching for this category of hard copy record should be disregarded.

b. We have drawn attention to two occasions where the University appears to have carried out an electronic search with a view to identifying relevant material. The Appellant's suggestion, made in his first response to the rejection of his information request, raised the possibility of an organisation-wide electronic search based on various keywords and Boolean logic operators. The Appellant has asserted that the application of this technique would have enabled the University to respond to his information request very simply and without incurring anything approaching the costs suggested by its estimate. The University did not respond to this suggestion at any time in its correspondence with the Appellant or, subsequently, with the Information Commissioner. However, given the difference between the very substantial time saving that the Appellant claims would be possible if his suggestions were followed, and the time that the University suggests would need to be spent on the search for documents, we wish to have further information from the University about the electronic searches it has carried out to date and the facilities available to it for that purpose. We have therefore set out a number of questions in the annex to this preliminary decision, which we ask the Information Commissioner to put to the University and to report back to us with its responses. We will then give the parties an appropriate length of time to submit written submissions on the relevance of any additional information provided to us at that stage.

c. The University has suggested that the time required for checking documents for relevance would be five minutes for each email and five minutes for each document stored electronically. We are not convinced that it would take five minutes to check whether a document stored electronically was or was not a draft of the proposal (which is all the Appellant has asked for and may be evident from the path name under which it was saved). Nor are we convinced that five minutes is required to locate a relevant email, given that many of the messages are likely to form part of a single string and bearing in mind that time taken in considering whether any redaction may be justified falls outside the scope of the tasks which it is permissible to take into account. We make no decision on this aspect of the matter at this stage but may need to return to it, and to invite submissions on the point at that stage, in light of the answers provided to the annexed questions.

41. We should add a footnote to the issue discussed in paragraph 39 b.above. The Appellant went so far as to suggest that the Tribunal should order the University to make its electronic records available to

him in order to carry out his own searching. The suggestion was both impracticable and comfortably beyond the powers given to the Tribunal, but the Appellant went on to assert that, if we did not adopt his suggestion, we would not be entitled to question what he described as his own “academic judgement”, to the effect that the 18 hour threshold would not be exceeded in this case. The notion that a tribunal, having decided that Parliament has not vested it with jurisdiction to order a particular process, should then simply proceed to accept at face value whatever was said on the topic by the party proposing the adoption of that process (on the basis that it represented his “academic judgement”), is frankly irrational and we have no hesitation in rejecting it.

Sixth Ground of Appeal – breach of Data Protection Act 1998

42. The Appellant found, in the University’s description of how it might carry out a search of archived back-up tapes, what he believed would have been a breach of the Data Protection Act. He sought to develop from this hypothetical statement of a possible data manipulation process evidence of what he believed would have been a breach of the DPA. From that he contrived an additional ground of appeal to the effect that the University should not be permitted to rely on its estimate of the volume of the second Principal Investigator’s email traffic because, had it carried out the alternative of an archive recovery, and had it followed the process it suggested, it would have committed a breach of the DPA. This part of the Appellant’s case is based on a course of action which the University did not adopt. If it had done so, and if that had led to a breach of the DPA, this Tribunal would have had no jurisdiction to take action in respect of it. We could not, in any event, discern any logical connection between such a hypothetical breach and the adoption of the estimate of email traffic on which the University did rely. There may be other reasons for challenging the use of that estimate in the cost calculation relied on by the University, but this ground of appeal does not provide one and we dismiss it.

Conclusion

43. For the reasons set out above we have rejected all of the grounds of appeal except for the Appellant’s challenge to the reasonableness of the cost estimate relied on by the University as the basis for rejecting the Appellant’s information request. In respect of that ground we make no decision at this stage, pending receipt of the additional information and explanation identified in paragraph 40 b. above and the Annex below.

44. The time for appealing any part of our decision, including those grounds on which we have reached a final determination in this Preliminary Decision, will not start to run until the date when we promulgate a final decision.

Annex

1. What time period, in months, was covered by the automated searches referred to in paragraphs 32 and 34 above?
2. Do the number of messages referred to in the quotation set out in paragraph 32 refer to individual messages or to message strings?
3 What software system was used to store the email messages of the Principal Investigators that were subjected to the automated search used to filter emails in the manner described in that quotation?
4. What search terms were used in that search?
5. Would the emails of all other individuals involved in working on the ESPRC proposals have been saved on to the same system and searchable in the same way?
6. Was any attempt made to run an automated search on the 159 documents referred to in paragraph 33 above?
7. If so, what search terms were applied and with what result?
8. Were those documents saved on a University-wide system on which others involved in the preparation of an ESPRC proposal would also have stored documents?
9. If so, could keyword searches be run on that system in order to identify documents relating to ESPRC or to any proposal prepared for the purpose of being submitted to it?

………..

Judge
2015