

## FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

### DECISION NOTICE

Dated 25th November 2005

**Name of Public Authority:** Newcastle City Council

**Address of Public Authority:** Civic Centre  
Newcastle upon Tyne  
NE99 2BN

#### **Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint which states that on 4<sup>th</sup> April 2005 the following information was requested from Newcastle City Council under section 1 of the Freedom of Information Act 2000 (the "Act"):

"All financial details relating to the Tyne and Wear Anti-Fascist Association (TWAFSA) and Newcastle City Council, income and expenditure, grant applications and the receipts for public monies spent within the last twelve months."

This request was a refining of an earlier request which was refused on the grounds of costs;

"All financial details relating to the Tyne and Wear Anti-Fascist Association (TWAFSA) and Newcastle City Council, income and expenditure, grant applications and the receipts for public monies spent within the last five years."

It is alleged that:

Newcastle City Council wrongly claimed that the cost of complying with the request would exceed the appropriate limit.

#### **The Commissioner's Decision**

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Guidance on the application of the Freedom of Information and Data Protection (Appropriate Limit and Fees) 2004 sets out what may be taken into account when public authorities are estimating whether the appropriate limit has been exceeded. The costs are limited to those that an authority reasonably expects to incur in: determining whether it holds the information requested, locating the information or documents containing the information, retrieving such information or documents, and extracting the information from the document containing it (including editing or redacting information).

Newcastle City Council provided evidence to the Information Commissioner that the costs of complying with the original request would exceed the appropriate limit. They further explained that the cost of complying with the modified request would not bring the costs below that limit. This appears to be largely due to the filing system and the way that the information is stored. In refusing the Complainant the information, Newcastle City Council complied with section 12(1) of the Act.

Section 12(1) states;

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

However the Commissioner is of the opinion that Newcastle City Council could have provided more advice and assistance to the Complainant both prior to this modified request being made and subsequently. The Council might have provided an outline of the different types of information which may have met the terms of the request or provided access to detailed catalogues and indexes where these are available, to help the applicant ascertain the nature and extent of information held by the authority in order to modify his request accordingly. By failing to offer such advice and guidance, Newcastle City Council has been found in breach of section 16(1) of the Act. Section 16(1) states;

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

### **Action Required**

In view of the matters referred to above, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that Newcastle City Council shall, within 30 days of the date of this Decision Notice:

Offer advice and assistance to the complainant sufficient for him to ascertain whether or not it would be possible to modify the request in such a manner that the costs limits would not apply. This would not preclude the inclusion of other exemptions if considered appropriate.

### **Failure to comply**

Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

### **Right of Appeal**

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: <a href="mailto:informationtribunal@dca.gsi.gov.uk">informationtribunal@dca.gsi.gov.uk</a>
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 25<sup>th</sup> day of November 2005

Signed: .....

Richard Thomas  
Information Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF