

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 12 March 2007

**Public Authority:** The Department of Health  
**Address:** Richmond House  
79 Whitehall  
London  
SW1A 2NS

### Summary

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The complainant requested information in relation to the Road Traffic (NHS Charges) Act 1999. The Commissioner is satisfied that, under section 12 of the Act, the public authority was not obliged to confirm or deny whether it held the information, as to do so would in itself exceed the appropriate limit. The public authority informed the complainant within 20 working days of the request that it was relying on section 12 of the Act, and the Commissioner is therefore satisfied that the public authority has complied with section 17 of the Act. Following the Commissioner's intervention, the public authority provided further advice and assistance to the complainant and the Commissioner now considers that the public authority has complied with section 16 of the Act.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 8 April 2005, the complainant on behalf of a client requested information concerning the Road Traffic (NHS Charges) Act 1999 from the Department of Health (the DH). The full transcript of the request can be found at Annex A to this Decision Notice.
3. On 6 May 2005, the DH wrote to the complainant to inform them that it was refusing the request. It gave the reason that "The Freedom of Information Act 2000 provides for public authorities to refuse requests where the cost of dealing

with them would exceed the appropriate limit, £600 for central government.” On 4 August 2005, the complainant requested a review of the decision and, on 7 September 2005, the DH wrote to the complainant to inform them that its review upheld the original decision.

## The Investigation

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### Scope of the case

4. On 17 November 2005 the complainant contacted the Commissioner to complain about the way their request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The DH has not confirmed whether or not it holds the information requested
  - The cost of compliance with the request does not exceed the appropriate limit
  - The DH has not provided a response within the 20 working day statutory response time limit
  - The DH has not provided appropriate advice and assistance

### Chronology

5. **3 February 2006** The Commissioner wrote to the DH to clarify whether it held the information. On 8 March 2006, the DH responded that it “did hold information relevant to this request.”
6. **15 March 2006** The Commissioner asked the DH to issue a response to the complainant confirming whether it held information on each of the elements of the request. On 12 April 2006, the DH wrote to the complainant on to confirm that “the cost of determining whether we hold information on each of the twelve elements would exceed the appropriate limit.”
7. **19 April 2006** The Commissioner wrote to the DH, asking it for an explanation of how the appropriate limit would be exceeded. The DH provided details of how the information is stored on 26 May 2006.
8. **13 July 2006** Following the Commissioner’s request for further explanation of the storage of the information, the DH responded on 13 July 2006 with further details.
9. **6 December 2006** The Commissioner asked the DH to write to the complainant to assist them in refining the request, which the DH did on 5 January 2007.

### Findings of fact

10. The complainant made their request on 8 April 2005. The DH responded on 6 May 2005, but did not confirm or deny whether it held the information.

11. The DH has provided the Commissioner with a copy of its Records Management Policy, showing consistent application of procedure.

## Analysis

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### Procedural matters

12. The Commissioner will now consider each of the four aspects of complaint outlined at paragraph 4 above.

### Has the appropriate limit been exceeded?

13. Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 provides for four components which a public authority may take into account when estimating the costs it reasonably expects to incur in relation to a request. These four components are:
  - Determining whether it holds the information
  - Locating the information, or a document which may contain the information
  - Retrieving the information, or a document which may contain the information
  - Extracting the information from a document containing it<sup>1</sup>
14. When estimating the costs, a public authority must use the rate of £25 per person per hour for the estimated time spent on the four components at paragraph 13 above. For public authorities listed in Part 1 of Schedule 1 to the Act, of which the DH is one, the appropriate limit is £600. When this limit has been exceeded, the public authority is not obliged to comply with a request for information.
15. The DH stated that, since the requested information was of a historical nature (1996 to 1999), 40 closed files identified as relevant to the request were recalled from the Departmental Record Office (the DRO) in Burnley. The DH stated that its paper files are closed when they reach 3cm thick, at which point a new volume is opened. The 40 recalled files constitute volumes of the same series of file.
16. In order to illustrate that the appropriate limit would have been reached, an official selected one of the files at random, counted the number of pages within and then selected one page at random to assess whether any of the information was relevant to the request. The number of pages was 346 and the assessment time was three minutes. This time was partly due to the official's lack of experience, since the team that originally introduced the legislation had disbanded. It was also partly due to the diversity and number of elements of the request.
17. The DH extrapolated this time taken assessing one page to estimate that it would take roughly 97 days to complete the assessment of all 40 files in order to produce a definitive response as to whether information is held to fulfil any of the

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<sup>1</sup> See Legal Annex for relevant extract

elements of the request. The DH confirmed to the Commissioner at a later stage that there were in fact 36 files as opposed to 40 as initially stated.

18. The DH explained that each file in the DRO has its own individually allocated reference, which consists of the distributed local file office, prefix (signifying the main topic area) and possible sub-levels below this to further narrow down the topic. It also has a volume number, start and end dates, and a subject title. When the request was received, DH officials relied on the storage references indicating main topic areas and possible sub-levels. They asked the DRO file store to search its database using the complainant's client's name as the key word in the file title.
19. The DH explained that it believed the files returned from this search parameter to be the most likely relevant to the request, because they had an obvious connection with the requester. The 36 files are all volumes of the same series of files, entitled 'Road Traffic Act (NHS Charges Bill) – [name of complainant's client].' The start date of the first volume is 13/09/95 and the end date of the last volume in the series is 05/08/1999. None of the 36 files has a top sheet or a table of contents.
20. From the findings of fact at paragraphs 15 to 19 above, the Commissioner is satisfied that the DH has made a reasonable estimate that the appropriate limit would be exceeded in determining whether it holds the information.

#### **Is the DH obliged to confirm or deny whether it holds the information?**

21. Where a public authority estimates that the appropriate limit would be exceeded, section 12(1)<sup>2</sup> of the Act provides that the public authority is not obliged to comply with a request for information. In particular, section 12(2)<sup>2</sup> of the Act provides that the public authority is not obliged to inform the applicant whether or not it holds the information if it estimates that doing so would by itself exceed the appropriate limit. On this basis, the Commissioner is satisfied that the DH was not obliged to confirm or deny whether it held the information and did not breach section 1(1)(a) of the Act.

#### **Was a response provided within 20 working days?**

22. The date of the complainant's request was 8 April 2005. The DH responded on 6 May 2005, within the 20 working days allowed under the Act. The Commissioner must then consider whether this was a valid response.
23. Section 17(5) of the Act provides that, if a public authority is relying on a claim that section 12 applies, the public authority must inform the applicant of that fact within 20 working days. Paragraph 3 above shows that, on 6 May 2005, the DH did inform the complainant that it could not comply with the request due to the cost exceeding the appropriate limit. Whilst the response did not specifically state which section of the Act the DH was relying on, it was clear that it was relying on

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<sup>2</sup> See legal annex for relevant text of the Act

section 12. The Commissioner is therefore satisfied that the DH did not breach section 17(5)<sup>2</sup> of the Act.

### **Has the DH provided adequate advice and assistance?**

24. Section 16(1)<sup>2</sup> of the Act places an obligation on public authorities 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.” Under section 45 of the Act, the Secretary of State for Constitutional Affairs has issued a ‘Code of Practice on the discharge of public authorities’ functions under Part 1 of the Freedom of Information Act 2000.’ This will be referred to as ‘the section 45 code.’ Section 16(2)<sup>2</sup> provides that conformity with the section 45 code is to be taken as compliance with the duty to provide advice and assistance.
25. Paragraph 14 of the section 45 code states that, where a public authority estimates the appropriate limit to be exceeded, “the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.”
26. In its response of 6 May 2005, the DH informed the complainant that “if you are able to refine your request to bring it below the limit, any information that can be provided will be provided free of charge.” Then, in its review outcome of 7 September 2005, the DH informed the complainant that they are “free to make a revised and more narrow request, and we will see whether we can comply within the appropriate limit.” The Commissioner did not consider that these two responses constituted adequate advice and assistance. He asked the DH to provide further advice and assistance to enable the complainant to receive information under the appropriate limit.
27. The DH responded by stating the following: “...to indicate accurately which element would have had the most beneficial result to the applicant would have necessitated complete examination of the files... Without further indication from the applicant about the information that he was particularly interested in we felt we could not offer any further ideas about how the request could have been refined.” This clarification satisfied the Commissioner that Section 16 of the Act had actually been complied with as the nature of the information requested meant that there was only a limited amount that the DH could do to refine such a large request.
28. In an effort to bring an informal resolution to the matter, the Commissioner then wrote to the DH asking it to action either of the following options:
  - “Could you write to the complainant inviting him to explain the main focus of his request
  - Could the DH ascertain what it believes to be the main focus of the complainant’s request and offer to provide as much of that information to him within the appropriate limit

- If you are unable to action the two options above, I would ask you to provide the complainant with information in response to as many elements (in no particular order) of the request the DH estimates it is able to comply with before the appropriate limit is exceeded”
29. The DH chose the first option at paragraph 27 above and wrote to the complainant on 5 January 2007 to state the following: “we are now inviting you to explain the main focus of the request. Such an explanation may enable us to identify more precisely the essential information your client is seeking.” This correspondence from the DH to the complainant has satisfied the Commissioner that the DH has fulfilled its obligation to provide advice and assistance under section 16(1) of the Act.
30. On 9 January 2007, the complainant wrote to the DH explaining that “the main focus of our client’s request is his attempt to seek the papers which led to the perceived injustice. Our client is particularly concerned as to the involvement in the process of [name redacted], formerly Head, Operation Unit 1, of your Department.”
31. The DH has confirmed that [name redacted] was indeed the Head of Corporate Affairs Operational Unit (A) until approximately 1997/98 when he left the DH. The DH has stated that to undertake a trawl to identify a named individual would again necessitate examination of every piece of filing in the same files identified to respond to the initial request of 8 April 2005. As such, the DH is claiming that the appropriate limit would be exceeded in responding to the complainant’s revised request of 9 January 2007.

## The Decision

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32. The Commissioner’s decision is that the public authority was correct in neither confirming nor denying that the information was held on the basis that the appropriate cost limit was exceeded. The public authority provided both an adequate response within the time period permitted under the Act and adequate advice and assistance to enable the complainant to refine their request. The Commissioner is satisfied that the public authority dealt with the initial request for information in accordance with the Act.
33. The Commissioner is also satisfied that that the appropriate limit would be exceeded by the public authority in responding to the complainant’s revised request of 9 January 2007.

## Steps Required

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34. The Commissioner requires no steps to be taken.

## Right of Appeal

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35. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 12<sup>th</sup> day of March 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex A: The request

1. In the first budget statement of the Chancellor of the Exchequer made on 2 July 1997, the Chancellor of the Exchequer announced an intention to recoup the full costs of treating road accident victims from insurers. Please furnish all information, costings, advice and other documents whatsoever supplied by or on behalf of the Department of Health or otherwise in the possession or control of the Department of Health which may have contributed to the formulation of this intention.
2. Mr Colin Reeves, Director of Finance and Performance, wrote to all NHS Trust Chief Executives on 3 December 1997. A copy of this letter is attached as appendix 1 to this letter. Please:
  - (a) furnish all letters, faxes, minutes, notes, drafts, memoranda, and other documents whatsoever which evidence the reasons for preparing and sending the letter and the genesis of its text;
  - (b) furnish all letters, faxes, minutes, notes, drafts, memoranda, and other documents whatsoever which indicate what organisations were being referred to by Mr Reeves in paragraph number 12 of his letter.
3. Mr Alan Langlands, NHS Chief Executive, wrote to [name of complainant's client] on 26 July 1996. A copy of his letter is attached as appendix 2 to this letter. Please furnish copies of all information, costings, advice, memoranda, minutes and other documents whatsoever relied on by Mr Langland's letter.
4. Please furnish copies of all information, costings, advice, memoranda, minutes and other documents whatsoever supplied by or on behalf of the Department of Health or otherwise in the possession or control of the Department of Health which relate to the decision by the Department of Health to promote the *Road Traffic (NHS Charges) Act 1999*.
5. Please furnish copies of all information, costings, advice, memoranda, minutes and other documents whatsoever relied on by the Department of Health in instructing, recommending, advising or otherwise communicating to the compensation recovery unit of the DSS (as it was then) that form CRU1 should contain details of the hospital attended by the patient following a road traffic accident.
6. Please furnish copies of all information, costings, advice, memoranda, minutes and other documents whatsoever relied on in the possession of the Department of Health concerning the decision not to promote NARTRACC to administer the requirements of the *Road Traffic (NHS Charges) Act 1999*.
7. Please furnish copies of all minutes and other records whatsoever of all meetings held between [name of complainant's client], NARTRACC and their advisers on the one hand, and [name redacted] of the Department of Health on the other, from October 1996 onwards.
8. A Regulatory Appraisal document with appended Regulatory Quality Certificate signed by the Secretary of State on 23 February 1998 is attached as appendix 3 to this letter. Please:
  - (a) furnish copies of any other Regulatory Appraisal documents or similar, or any drafts therefore, that were produced in respect of the *Road Traffic (NHS Charges) Act 1999* or any predecessor thereof.
  - (b) furnish copies of documents which evidence the intended recipients or consultees if any to whom the said Regulatory Appraisal document was sent, if any.



- (c) furnish copies of documents which evidence the intended recipients or consultees if any to whom any other Regulatory Appraisal documents or similar, or any drafts therefore, that were produced in respect of the Road Traffic (NHS Charges) Act 1999 or any predecessor thereof were sent, if any.
  - (d) furnish copies of (i) responses from recipients and consultees, and (ii) documents which evidence or collate the information contained in such responses.
  - (e) furnish copies of documents which evidence the reasons, if any, for the suggestion in paragraph b. of annex 1 to the Regulatory Appraisal document that, *"A full tendering process for potential commercial bids would have seriously delayed the project."*
  - (f) furnish copies of documents which evidence when money was first collected under the scheme put in place by the Road Traffic (NHS Charges) Act 1999.
  - (g) furnish copies of documents which evidence (i) how the estimates of benefits of option 4 in paragraph 7 of the Regulatory Appraisal document were calculated, and (ii) the source(s) of information used.
  - (h) furnish copies of documents which evidence any attempts made to identify or calculate the losses referred to in paragraph 10.3 of the Regulatory Appraisal document.
  - (i) furnish copies of documents which evidence any assessments that were made of the costs, merits or demerits of private sector companies, including those that were already dealing with the recovery of NHS charges, administering the scheme.
  - (j) furnish copies of documents that were submitted to the Secretary of State by way of briefing note, background materials, or otherwise in relation to the said Regulatory Appraisal, to inform his understanding of the appraisal and his decision on whether to sign the Regulatory Quality Certificate.
9. Please furnish copies of all information, costings, advice, memoranda, minutes and other documents whatsoever relied on by the Department of Health in the decision not to pay or offer to pay compensation to private sector companies that were already dealing with the recovery of NHS charges upon the introduction of the Road Traffic (NHS Charges) Act 1999.
  10. Please furnish copies of all documents which evidence the decision itself its genesis and the reasons therefore.
  11. Please furnish copies of all minutes and other records whatsoever of the meeting held between Phil Hope MP and the Secretary of State for Health on or around 2 June 1997.
  12. At a meeting between, inter alios, [name of complainant's client] and [name redacted], Head of Operational Policy, Unit 1, on October 1996, at Rushmere House, Raunds, prior to a meeting with Mr. John Horam MP on 22 October 1996, [name of complainant's client] discussed with [name redacted] correspondence from Insurance Companies which [name of complainant's client] contended evidenced possible fraud on the NHS. Subsequently, at [name redacted]'s request, he was provided by [name redacted] with further details of 50 cases of possible fraud. Please furnish copies of all letters, faxes, minutes, notes, drafts, memoranda, and other documents whatsoever which evidence the steps if any taken by [name redacted] in relation to those documents including (but not limited to) steps taken by him to report any matter or matters arising from those documents to other parties whether or not within the Department of Health."

## **Annex B: Legal annex**

**Regulation 4** of the of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 provides that –

(1) “This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent, apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request 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

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

**Section 1(1)** provides that -

“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.”

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), 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.”

**Section 12(1)** provides that –

“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.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 16(1)** provides that –

- (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”.

**Section 16(2)** provides that –

- (2) “Any public authority which, in relation to the provision of advice and 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.

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”