

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 2 July 2007

**Public Authority:** Parliamentary and Health Service Ombudsman  
**Address:** Millbank Tower  
Millbank  
London  
SW1P 4QP

### Summary

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The complainant requested information relating to the dates of communications between a specific officer of the Parliamentary and Health Service Ombudsman (the "PHSO") and the Office of the Deputy Prime Minister. The PHSO refused the request on the grounds that it was vexatious. The PHSO stated that the request served no purpose or value and that the cost and time they would be required to spend in order to comply with the request would impose a significant burden. The Commissioner finds that the request was incorrectly refused as vexatious under section 14(1) of the Act and that the PHSO failed to comply with section 1(1) of the Act. The Commissioner finds that, in their handling of the request, the PHSO did not breach section 16 of the Act as the duty to advise and assist does not apply where section 14 has been applied. In failing to issue a Refusal Notice within the statutory time limit of twenty working days, the PHSO breached section 17(5). In referring the complainant directly to the Commissioner, the PHSO effectively advised him that no internal review process was available for complaints about the handling of requests for information and in doing so complied with section 17(7) of the Act. During the course of his investigation the Commissioner established that, given the scope of the request, it was likely that the cost of compliance would exceed the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations"). In an attempt to resolve matters informally the Commissioner asked the PHSO to respond to a refined version of the request which had been submitted to the Commissioner by the complainant. The PHSO agreed to undertake this and, in responding to the complainant's refined request the Commissioner is satisfied that they have complied with their duties under part I of the Act. Therefore, he has not ordered the PHSO to take any steps.

### 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 6 December 2006 the complainant requested the following information:

"...the dates of any communications between Mr Andy Comber of the OPHSO and the Enquiry and Complaints department of the Office of the Deputy Prime Minister between January 2002 and December 2005."

3. On 10 January 2007 the PHSO responded stating that they were refusing to provide the information because they considered that the request was vexatious. The reasons given for this were twofold:

- "Insofar as we hold that information it is not easily accessible and we consider that responding to your request would impose a significant burden on this Office in terms of time locating the information and the costs involved."
- "Also we fail to see that your request has any serious purpose or value."

The PHSO did not offer the complainant the option of an internal review but stated that, should he be dissatisfied with their decision, to direct any complaint to the Commissioner.

## The Investigation

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### Scope of the case

4. On 11 January 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- With regard to the PHSO's determination that complying with the request would impose a significant burden, the number of case files that the PA would need to search would be minimal. This, combined with an effective record keeping system, should mean that the request could easily be handled.
- With regard to the PHSO's concerns about the cost of complying with the request, the PHSO failed to offer advice and assistance and did not give the complainant an opportunity to clarify or refine his request.
- With regard to the PHSO's determination that the request has no serious purpose or value, the information is required to determine if there has been collusion between the PHSO and the Office of the Deputy Prime Minister

(the "ODPM") and whether the PHSO has contravened its own conflict of interest policy.

- The PHSO failed to respond to the request within the statutory twenty working day time limit.

## Chronology

5. The Commissioner wrote to the PHSO on 28 March 2007 to request more information about their decision to refuse the request. This letter asked the PHSO to frame its response within the following parameters:

"(1) If the PHSO decides that it wishes to uphold their use of section 14(1) to refuse the request, please write to provide the necessary reasoning and evidence...

(2) If the PHSO decides that it wishes to overturn their use of section 14(1) but considers that the cost of complying with the request exceeds the appropriate limit as defined by the Fees Regulations, please write to clarify this and to also indicate how they might advise and assist the complainant in this event.

(3) If the PHSO decides that it wishes to overturn their decision to apply section 14(1) the Commissioner will, of course, be happy to facilitate the process of disclosing any relevant information held to the complainant."

Additionally, the PHSO was informed that the complainant had clarified with the Commissioner that the reason for requesting the information was to establish the nature of the relationship between the PHSO and the ODPM.

6. The PHSO responded on 4 April 2007 and provided information concerning its refusal. They confirmed that they wished to uphold their application of section 14(1) to refuse the request because:

- The information requested, which related to one, specific officer of the PHSO, would not enable the complainant to establish the relationship between the PHSO and the ODPM.
- The complainant had, prior to making his request for information, submitted a complaint to them in their capacity as the Ombudsman. Subsequent to this complaint case being closed the complainant made a number of requests for information which the PHSO considers had the effect of continuing correspondence with them which served no serious purpose or value. The main effect of the request would be disproportionate inconvenience and expense.
- The PHSO's records management system has no business need or provision for reporting on the dates of communication between one staff member and one of the bodies they investigate as part of their function. In order to locate and retrieve all the information requested it would be necessary to manually search through a substantial number of case records. In addition, the PHSO's previous case management system (operative prior to April 2005) does not record all communications so a further search of on and off-site paper records would be necessary. The PHSO stated that they also considered that the cost of complying with the request would exceed the appropriate limit as defined in

the Fees Regulations and that, as the request did not appear to have any purpose or value, they did not see that it could be refined and brought within the appropriate limit.

7. The complainant telephoned the Commissioner on 16 April 2007 and confirmed that he did not accept that his request could be considered vexatious and that the PHSO had not offered advice and assistance to help him to clarify his request. The complainant stated that he considered that his request could be clarified to take account of the restrictions of the PHSO's records management system and to bring it within the confines of the appropriate limit.
8. The complainant wrote to the Commissioner on 17 April 2007 and presented further arguments in support of his claim that his request was not vexatious. The complainant also submitted a refined version of his request to the Commissioner. The complainant explained that his understanding was that the PHSO had implemented a specific case management system and, in order that his request could be easily processed, he had discussed what he knew to be the PHSO's case management system with the system supplier
9. The Commissioner wrote to the PHSO on 24 April 2007 and asked it to comment on the points made by the complainant in his letter to the Commissioner. In addition, the Commissioner asked the PHSO to confirm whether, with regard to the purpose or value to the request, they had considered approaching the complainant for further clarification. The Commissioner invited the PHSO to comment on whether they thought it might have been appropriate, under the terms of section 16 of the Act and the duty to advise and assist those making requests for information, to have done this. The PHSO was also invited to provide a response to the complainant's refined request.
10. The PHSO wrote to the Commissioner (letter received 2 May 2007) and confirmed that they had provided the complainant with the information specified in his refined request. In responding to the points made by the complainant in support of his original application the PHSO stated they still upheld their original decision to refuse the request because:
  - The PHSO stated that the apparent change in the reasons offered by the complainant for making the request was further evidence of a lack of clear purpose to the request.
  - The PHSO asked the Commissioner to advise how they might have been able to advise and assist the complainant by enquiring as to the reasons behind his request when the Commissioner's awareness guidance relating to section 16 of the Act states that this is not permitted.
11. The Commissioner wrote to the complainant on 11 May 2007 and explained the discrepancy between the complainant's representation of the PHSO's Conflicts of Interest policy and that provided by the PHSO. The repercussions of this for the putative purpose of the request were explained to the complainant. The Commissioner explained that, regardless of the applicability of section 14(1) to his

request, it was likely that the Commissioner would find that his original request would have been subject to the exemption in section 12(1) of the Act.

12. The Commissioner wrote to the PHSO on 7 June 2007 and addressed the PHSO's concern that the complainant had seemingly presented differing reasons for requesting the information. The Commissioner explained that it was his understanding (from the complainant's submissions) that the PHSO's Conflicts of Interest policy stated that their investigators are precluded from working on multiple cases against an organisation complained about unless a reasonable time period has elapsed. It, therefore, seemed reasonable for the Commissioner to summarize the complainant's reasons in the manner he did in his letter to the PHSO of 28 March 2007.<sup>1</sup> Any apparent changes in the reason presented by the complainant for making the request were due to the Commissioner's rather broader initial representation of the reason to the PHSO rather than any shift on the complainant's part. With regard to the PHSO's concerns about the apparent prohibition, articulated in the Commissioner's own awareness guidance, against enquiring under section 16 as to the reasons why applicants have made specific requests, the Commissioner provided clarification. In summary, the Commissioner confirmed that the intention of the guidance was to emphasise that the Act does not require individuals to provide reasons for making requests. In cases where an authority considers that the motivation behind a request might be vexatious it is in the interests of an applicant to be given an opportunity to explain otherwise. The intention of the guidance, therefore, is to reaffirm that section 16 is not a mechanism for establishing the motive behind a request, or a bargaining tool but rather it is to give applicants an opportunity to frame their request in terms that an authority can understand and perhaps comply with.

### **Findings of fact**

13. The information request was one of a series of requests made by the complainant subsequent to his complaint case with the PHSO being closed. The PHSO considers that this demonstrates an intention by the complainant to continue correspondence to no useful purpose, behaviour which they consider can be fairly characterised as obsessive.
14. The PHSO considers that the apparent lack of purpose to the request combined with the disproportionate burden the request would incur (in terms of the time it would take to locate and retrieve the information) are grounds for treating the request as vexatious.
15. The PHSO failed to respond to the request within the statutory twenty working day time limit as required by section 17(5) of the Act.
16. The complainant does not accept that his request is vexatious.

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<sup>1</sup> This letter clarified that the complainant had requested the information in order to establish the nature of the relationship between the PHSO and the ODPM.

## Analysis

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### Procedural matters

#### Section 1

17. The Commissioner has considered whether the PHSO has complied with section 1 of the Act.

18. Section 1(1) states:

“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.”

19. The PHSO refused to answer the request because they considered that it was vexatious under the terms of section 14(1) of the Act.

#### Section 14

20. Section 14(1) of the Act states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

21. In order to determine whether the request is vexatious under section 14 (1) of the Act, the Commissioner has had regard to Awareness Guidance No. 22 issued by his Office. In making his assessment, the Commissioner has focused on whether the request is vexatious because it would impose a significant burden and:

- clearly does not have any serious purpose or value;
- can otherwise fairly be characterised as obsessive or manifestly unreasonable.

The Commissioner considers that, in this case, the effects of the PHSO's use of the above specified elements to define the request vexatious are both sequential and cumulative. That is, the Commissioner is of the view that, should the PHSO's central argument (relating to their assessment of the purpose or value of the request) for bringing the request within the ambit of section 14(1) is shown to be wrong then their supplementary arguments cannot on their own sustain the application of the exemption.

## Purpose or Value

22. The PHSO has argued that the information request does not have any serious purpose or value and that to comply with the request would impose a significant burden on the PHSO's resources. Although the Act is both applicant and purpose blind, when considering the application of section 14, in line with his own guidance, the Commissioner recognises that some weight has to be given to the purpose of the request. The Commissioner considers that it is not appropriate for a request to be dismissed as having no purpose or value simply because a PHSO cannot imagine what that purpose might be. It is incumbent upon public authorities to demonstrate that a request has a lack of worth or value, rather than to merely suggest that because an applicant did not provide a reason that there cannot be one.
23. The complainant clarified with the Commissioner that the reason for requesting the information was that the PHSO's Conflict of Interest policy states (allegedly) that investigating officers should not be involved in multiple or recent complaints concerning an organisation. The requested information would, therefore, allow the complainant to establish whether this policy was being observed.
24. The Commissioner has established that the reason provided by the complainant is untenable. The PHSO has confirmed to the Commissioner that their Conflicts of Interest policy (a copy of which was provided to the Commissioner), contrary to the complainant's view, does not state that investigating officers should not be involved with multiple or recent complaints concerning an organisation. The information specified in the complainant's request, therefore, cannot serve the purpose for which it was requested. However, the Commissioner maintains, and has confirmed in previous decision notices issued in this regard<sup>2</sup>, that the test of whether a request has purpose or value is to be applied to the intention behind the request. In this case, despite the subsequent clarification of the facts, the Commissioner considers that the original intention of the request was purposeful – the complainant had a genuine, reasonable interest in establishing whether the PHSO's practices conformed to their operating policies. Whilst this might not have been apparent to the PHSO at the time of the request, this does not negate the intention.

## Obsessive or Manifestly Unreasonable

25. It has become apparent during the course of the investigation that the complainant has previously been in correspondence with the PHSO with regard to a complaint, the investigation of which is one of the PHSO's functions. The PHSO has advised the Commissioner that, subsequent to this complaint case being closed, the complainant submitted a number of requests for information. The PHSO has argued that the complainant's intention in submitting the requests was to continue correspondence with them and that the requests were a reflection of his dissatisfaction with the outcome of his complaint. Whilst the subject matter of the information requested varied, the PHSO maintains that they display a pattern of behaviour that can fairly be categorised as obsessive. The

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<sup>2</sup> See decision notice reference: FS50120313.

Commissioner has seen the requests submitted by the complainant and notes that they mainly specify information which relates to the PHSO's duties as a complaints handler. The Commissioner considers that they constitute valid requests for the type of information (relating to public authority's functions) for which the Act was designed to promote access. The Commissioner is not satisfied that the requests can be fairly categorised as overly burdensome or to identify, for example, a pattern of requesting which is either obsessive or repeated in terms of the subject of the information requested. Also, as a complaints body, it might be reasonable for the PHSO to expect requests for information which relates to their functions. It is the Commissioner's view that neither the content nor the volume of the previous requests made by the complainant constitute sufficient grounds for labelling the current request obsessive or manifestly unreasonable.

### Significant Burden

26. With regard to the PHSO's argument that complying with the request would impose a significant burden on their resources, the PHSO explained to the Commissioner that their records management system has no business need or provision for reporting on the dates of communication between one staff member and one of the bodies they investigate as part of their function. In order to identify the dates of any communications between the officer named in the request and the ODPM the PHSO would have to search through the case histories of each of the cases on which that officer had worked within the specified dates and separately note and record the dates. This would not exclusively involve searching cases where the ODPM was the body subject to the complaint as the PHSO's investigative process often involves communications with government departments who are not the subject of the complaint. In addition, searches would need to be conducted of cases which are not recorded in the case officer in question's name as staff regularly undertake quality assurance and review work on each other's cases and some cases are reallocated. Therefore, communication with the ODPM could potentially be held on a case which is not recorded in a case officer's name. By way of context, the PHSO confirmed that in the 2005/2006 business year they reported over 1700 cases. In addition, the PHSO explained that their previous case management system (operative prior to April 2005) does not record all communications so a further search of on and off-site paper records would be necessary.
27. The Commissioner agrees that the burden the request would place on the resources of the PHSO is substantial but he does not accept that it was, therefore, appropriate to deem the request as vexatious. Given that the Commissioner does not agree that the PHSO was right to deem the request as without purpose, he considers that the cumulative effect of this is that the PHSO were not justified in considering it within the ambit of vexatious as defined by the Act and that it should instead have provided a response within the terms of section 1(1).
28. The PHSO stated that they also considered that the cost of complying with the request would exceed the appropriate limit as defined in the Fees Regulations and that, as the request did not appear to have any purpose or value, they did not



see that it could be refined and brought within the appropriate limit. The Commissioner agrees that, from the PHSO's submissions it seems likely that the cost of complying with the request would exceed the appropriate limit.<sup>3</sup>

29. The Commissioner acknowledges that if a PHSO estimates that to fulfil a request would exceed the appropriate limit, the request can legitimately be refused on the basis of section 12. However, if a PHSO seeks to refuse a request on the basis of section 14 because of the significant burden placed upon it by a request, this burden must equate to substantially more than the appropriate limit. In this case, in effectively conflating the cost limit provisions under section 12 and the vexatious request provisions under section 14 the PHSO closed down other normally available options for those requesting information under the Act.
30. Ordinarily, where the cost of complying with a request is estimated to exceed the appropriate limit, a PHSO would be expected to either provide that information which can be accommodated within the appropriate limit or to assist an applicant in refining their request. This duty is set out in section 16 of the Act. However, this duty does not apply where a PHSO is relying on section 14 to refuse a request.
31. During the course of the investigation the complainant submitted a refined version of his request to the Commissioner which the Commissioner forwarded to the PHSO. The PHSO responded to this request and, in so doing, the Commissioner considers that they have carried out their responsibilities under section 1(1) of the Act.

## Section 16

32. The Commissioner has considered whether the PHSO has complied with section 16 of the Act.

Section 16(1) states:

“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”.

33. When responding to the information request the PHSO did not give the complainant an opportunity to clarify the reasons for his request. Ordinarily, applicants would not be expected to identify the purpose of their request. In this case the PHSO refused the request as vexatious because they considered that it had neither purpose nor value. The Commissioner has clarified above why he

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<sup>3</sup> In this case, although the PHSO itself made reference to the “appropriate limit” they did not explicitly invoke section 12 of the Act. In reaching his conclusion on this matter the Commissioner referred to the Information Tribunal decision in appeal number EA/2006/0059 which, with specific reference to section 12 of the Act, directs the Commissioner to consider, as part of his investigation, instances where it is clear that the volume of information requested is an issue.

considers that in this case the PHSO was not entitled to reach this conclusion without, first, approaching the complainant for clarification. The Commissioner's view is that, in this case, it might have been good practice for the PHSO to have given the applicant an opportunity to explain the reasons for making his request, or to clarify the intention behind the request before concluding that it was vexatious. Although section 16 does not explicitly identify this approach as applicable within the terms of the duty to offer advice and assistance, it also does not prohibit such an approach. The Act is designed to make provision for the disclosure of information and, in this case, this provision was denied because the PHSO considered that the request served no purpose or value.<sup>4</sup>

34. When responding to the information request, the PHSO made no mention to the requester of how his request could be refined so that it would be less burdensome. However, although (as already confirmed in paragraph 29 above) this would ordinarily have been expected practice under section 16, the PHSO's application of section 14 disapplied this duty.<sup>5</sup>
35. Whilst the PHSO did not breach section 16 in this case, the Commissioner is of the view that section 16 does not prevent the offering of advice and assistance in cases where such a process would facilitate access to information. In this case, this is confirmed by the fact that the PHSO was able to swiftly comply with a refined version of the request, as submitted by the complainant to the Commissioner during the course of his investigation.

## Section 17

36. Section 17(5) states the requirements of a Refusal Notice when section 14 is being relied upon. The Notice must be provided to the applicant within 20 working days and must state that the public authority is relying on section 14 as a basis for refusing the request.
37. Section 17(7) provides that any Notice issued under section 17(5) should contain details of any procedure provided by the public authority for dealing with complaints about the handling of requests for information (or state that the authority does not provide such a procedure).

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<sup>4</sup> In the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) the Information Tribunal affirmed that the Act provides a presumption in favour of the disclosure of information. The Tribunal clarified that the duties to disclose and to confirm or deny are expressed in general terms so that unless there is a relevant exemption, these duties will operate. In other words, "the "default setting" in the Act is in favour of disclosure" (paragraph 82). Also, the short title of the Freedom of Information Act 2000 "...describes it as an Act to make provision for the disclosure of information held by public authorities." (paragraph 86).

<sup>5</sup> With regard to the duty to offer advice and assistance under section 16(1) of the Act, section 16(2) states: '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.' Paragraph 15 of the code of practice states (regarding advice relating to fees): 'An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of the Act.'

38. The complainant sent his request on 6 December 2006. The PHSO responded to the request on 10 January 2007 and, in doing so, failed to cite the reason for refusing to deal with the request within the 20 working day time limit prescribed by section 17(5).
39. In responding to the request the PHSO did not include details of any procedure they provided for dealing with complaints about the handling of requests for information. However, in referring the complainant directly to the Commissioner, the PHSO effectively advised him that no internal review process was available.

## **The Decision**

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40. The Commissioner has determined that the PHSO initially failed to comply with section 1(1) of the Act. This is because it refused to reply to the complainant's request, inappropriately citing section 14(1) of the Act.
41. In refusing the request the PHSO alluded to but did not explicitly apply section 12(1) of the Act. The Commissioner is satisfied that the cost of complying with the request would have exceeded the appropriate limit as defined in the Fees Regulations.
42. The Commissioner is satisfied that the PHSO did not breach section 16 of the Act.
43. In failing to issue a Refusal Notice within the statutory 20 working day time limit the PHSO breached section 17(5) of the Act.
44. The PHSO directed the complainant to the Commissioner in the event that he wished to complain about their handling of his request. In doing so the PHSO confirmed that, in this case, they were not providing a procedure for dealing with complaints about the handling of requests for information and, therefore, they complied with section 17(7) of the Act.
45. Following the Commissioner's intervention, the PHSO agreed to respond to a refined version of the complainant's request and in so doing the Commissioner is satisfied that they have now complied with their duties under Part I of the Act.

## **Steps Required**

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46. In view of the facts referred to above the Commissioner requires no steps to be taken.

## Other matters

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47. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

It became apparent during the course of the Commissioner's investigation that the explanations provided to him by the complainant with regard to the purpose of his request do not accord with the facts. In his initial submission to the Commissioner the complainant stated that the requested information was required to

"...determine if there has been collusion between the PHSO and the ODPM and whether the Ombudsman has contravened its own conflict of interest policy."

The complainant clarified that:

"...in accordance with the PHSO conflict of interest policy, PHSO investigators are precluded from working on multiple cases against an organisation complained about unless a reasonable time period has elapsed"

The complainant subsequently clarified to the Commissioner:

"The PHSO have identified within their Conflict of Interest policy that investigating officers should not be involved with multiple or recent complaints concerning an organisation. "

During the course of the investigation the PHSO provided the Commissioner with a copy of their "Conflicts of Interest policy". Having examined this, the Commissioner finds that the policy does not state what the complainant has claimed in his representations to the Commissioner. In addition, the Commissioner is of the view that it would not be possible to extrapolate the specific interpretation provided by the complainant from the Conflicts of Interest policy.

Whilst the Commissioner does not conclude that the complainant has sought to be deliberately misleading, he wishes to set on record that he considers his investigation might have been concluded more swiftly had the complainant clarified that his reasoning was based on his "interpretation" of the PHSO's Conflicts of Interest policy rather than the wording of the policy itself.

The Commissioner is disappointed that the PHSO failed to offer or conduct an internal review of their original decision to deem this request vexatious. This was done despite the existence of an appropriate complaints procedure at the authority. The PHSO will be aware that failure to provide an internal review in this case demonstrates non-conformity with Part VI of the section 45 Code of Practice.

## Right of Appeal

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46. 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 2<sup>nd</sup> day of July 2007**

**Signed .....**

**Marie Anderson  
Assistant Commissioner**

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

## Legal Annex

**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 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.”

**Section 17(7)** provides that –

“A notice under subsection (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide for such a procedure, and

(b) contain particulars of the right conferred by section 50.”