

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 February 2008

Public Authority: The Council of The University of Southampton
Address: Highfield
Southampton
SO17 1BJ

Summary

The University received a request for information concerning all of the data, reports, correspondence and memoranda it holds in relation to two Assessment Reports. The University determined that the cost of complying with the request would exceed the appropriate limit and therefore issued a Refusal Notice citing section 12 of the Act. The complainant responded to the refusal by limiting the scope of his request to the material relating to a single Assessment Report. The University again refused to comply with the request in reliance of section 12. Furthermore, when it concluded its Internal Review of this case, the University determined that the request additionally failed on the ground that it had been made by a corporate entity and not an individual. The Commissioner has investigated the extent to which the University holds relevant information. He is satisfied that the appropriate limit would be exceeded in complying with the revised request. However, the Commissioner also finds that the University failed in its duty to provide the complainant with advice and assistance and therefore it breached section 16 of the Act.

The Commissioner's Role

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

2. The complainant submitted the following two-part request to the Department of Health on 27 September 2005:

'The information we require, is that submitted or compiled by WIHRD / SHTAC for the purposes of the two Assessment Reports, in relation to the study known as "AD2000: A reliable assessment of the efficacy and safety of donepezil and aspirin in Alzheimer's Disease". In particular we require the following information:

1. All data, analyses, reports, correspondence (including emails) and memoranda in relation to the AD2000 study, compiled, obtained or prepared by WIHRD [Wessex Institute for Health Research and Development] in the context of the first Assessment Report (Clegg et al).

*2. All data, analyses, reports, correspondence (including emails) and memoranda in relation to the AD2000 study compiled, obtained or prepared by SHTAC [Southampton Health Technology Assessments Centre] in the context of the second Assessment Report (Loveman et al)'.
'*

This request was later refined to the substantive request considered in this Decision Notice. See paragraph 7 below.

3. The Department of Health responded to the complainant's request on 17 November 2005. The Department of Health confirmed that it does not hold information falling within the description specified and informed the complainant that it was transferring the request to the University of Southampton (The University).
4. On 16 December 2005 The University issued a Refusal Notice to the complainant, citing section 12 of the Freedom of Information Act 2000 as its reason for not complying with the request.
5. The complainant wrote to The University on 9 January 2006 to request a breakdown of how it assessed that compliance with the request would exceed the appropriate limit. The complainant stated that he did not accept the University's view that compliance with his request would exceed the cost limit. Nevertheless the complainant asked the University to provide advice on how he might refine his request.
6. The University replied to the complainant on 19 January 2006. It informed the complainant that it was *'difficult for us to provide advice and assistance on bringing your request within the cost threshold. Your original request is very broad and unlimited in nature and we are unsure of what information from within that we hold is of particular interest to your company.'* The University asked the complainant to provide specific indication of the information he would like from the University.
7. On 15 February 2006, the complainant informed the University that it had so far failed to advise him whether it held the requested information. The complainant stressed that he did not agree with the University's assessment of the cost of complying with the request, nevertheless, he restricted the scope of the request to the following:

'... the disclosure of all data, analyses, reports, correspondence (including emails) and memoranda in relation to the A2000 Study, compiled or prepared by SHTAC in the context of the assessment report: "The clinical cost effectiveness of donepezil, rivastigmine, galantamine and memantine in Alzheimer's Disease". Loveman et al August 2004.'

8. The University wrote to the complainant on 23 February 2006. It confirmed that it held 'documents of the type' he had requested. The University directed the complainant to the compiled report, stating that it was freely downloadable from the National Coordinating Centre for Health Technology Appraisal (NCCHTA) website.
9. On 3 March 2006 the complainant informed the University that he already had the Assessment Report. He emphasised that it was the source information, considered by SHTAC in preparing the report which he required. The University acknowledged this fact on 10 March 2006.
10. The University responded to the revised request on 21 April 2006 by issuing a Refusal Notice. The University confirmed that it held the requested information but that the time required for the University to comply with the request would exceed the appropriate limit under section 12.
11. The complainant requested an internal review of the University's decision on 12 May 2006.
12. The University reported the conclusions of its internal review to the complainant on 23 June 2006. The University determined that the complainant's request 'failed' on two grounds:
 - 'that the information rights conferred by the Freedom of Information Act 2000 are conferred on citizens, not corporate entities. The request was made by or on behalf of Eisai Limited, and must therefore fail;
 - that the estimated cost of compliance with the request as it is currently phrased exceeds the appropriate limit of £450.'
13. The University considered that its reference to the Assessment Report being available on the NCCHTA website was a clear reference to that information being reasonably accessible by other means and therefore exempt under section 21(1) of the Act. The University considered its failure to specify this section in its Refusal Notice constituted a breach of sections 17(1)(a) and 17(1)(b) of the Act. The University decided that it had breached section 10(1) of the Act by failing to make an appropriate response within the 20 working day limit and had breached section 17(5) of the Act by failing to specify section 12.
14. The University determined that it had not breached section 16 of the Act (Duty to Provide Advice and Assistance) as this 'applies only insofar as it is reasonable to expect the public authority to do so.' The University referred to the examples contained in the DCA's guidelines which it concluded relate to individuals with poor understanding of the FOI Act, not to companies, who in any event have their own financial and legal resources.

The Investigation

Scope of the case

15. On 29 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant provided a number of arguments in support of the disclosure of the requested information. These arguments, including those relating to the public interest are not addressed in this Decision Notice. This is because the sections employed by the University, namely sections 12 and 21, do not require the any consideration of the public interest test.
16. The Commissioner has confined his investigation of this complaint to whether the University was correct in refusing the request in reliance to section 12 (where the cost of compliance exceeds the appropriate limit).

Chronology

17. The Commissioner wrote to the University on 14 May 2007 asking it to provide a detailed, itemised account of the cost of complying with the request. The Commissioner drew the University's attention to section 8 of the Act, which describes the elements of a valid request for the purposes of the Act.
18. The University provided the requested estimate on 13 June 2007. This outlined the time required by SHTAC and NCCHT to undertake the necessary activities in order to comply with the request.
19. The Commissioner provided the complainant with the University's cost estimate on 23 July 2007. He asked the complainant for his comments regarding this estimate and enquired whether he would be prepared to withdraw his complaint on the basis that he accepted it.
20. The complainant replied to the Commissioner on 2 August 2007. He declined to withdraw his complaint on the basis that he did not accept the University's cost estimate. The complainant offered a number of reasons why the costs estimate is implausible. Furthermore, he wanted a Decision Notice in this matter to reflect the University's unwillingness to respond to his request because it had been made on behalf of a corporate entity.
21. The Commissioner wrote to the University on 7 August 2007 to seek further clarification of how the University holds the requested information. The University was asked a number of questions which were raised following the complainant's rebuttal of the costs estimate.
22. On 5 November 2007 the Commissioner wrote to the University to clarify how it identified material relevant to the request, particularly how it was able to make specific reference to 8 box files. The University responded to the Commissioner's

enquiry on 16 November. It informed him that the files 'specifically relate to the University's work on the assessment report... and contain a range of information associated with the relevant assessment report. Some of that information may mention the AD2000 study, however the University cannot confirm if any particular record within each set does or does not relate to the study until [its] personnel have examined it.'

Findings of fact

23. The University holds information relevant to the complainant's request in two of its departments: Southampton Health Technology Assessments Centre and the National coordinating Centre for Health Technology Assessment.
24. SHTAC holds 8 box files of administrative, published and unpublished hard copy data. It holds 784 files of electronically archived data (346 megabytes) and holds 953 'received' emails.
25. NCCHTA holds 59 hard copy documents (277 pages) in its project file record. It holds 2 CD ROMs (32 files / 7.34 megabytes) and 80.9 megabytes of electronically archived data. Additionally, it holds 120 emails.
26. The information held by NCCHTA was included in the University's estimate because it determined that it is relevant to the complainant's request. The University wanted to respond to the request in what it considered was the most holistic manner possible. The complainant indicated to the Commissioner that his request 'related to the AD2000 Study, compiled, obtained or prepared by SHTAC in the context of the second assessment report (Loveman et al).' The complainant accepts that certain materials prepared by SHTAC were subsequently dispatched to the NCCHTA; however he has determined that it seems unlikely that the NCCHTA would hold original material. The complainant stressed that it was the SHTAC information that was the focus of his request and not that held by NCCHTA. For this reason the Commissioner has not considered the NCCHTA information in his assessment of the cost of complying with the request.
27. SHTAC holds information identifiable as relating to the Loveman Assessment Report. In order to comply with the complainant's request it would be necessary for the University to review this material in order to determine whether it was associated with the AD2000 study.

Analysis

Procedural matters

Section 1

28. The Internal Review conducted by the University determined that the complainant's request 'must fail' because it was made on behalf of a corporate entity and not by an individual. However, the Commissioner has accepted that the request was valid.
29. Section 1 of the Act affords a right of access to "any person making a request for information to a public authority". The Act does not include a definition of 'person'. Therefore, the Commissioner considers that the definition of 'person' as set out in the Interpretation Act 1978 applies. This states that:

"Person" includes a body of persons corporate or unincorporate.

30. Section 8 specifies that a request must be in writing, state the name of the applicant and an address for correspondence and describe the information requested. Section 84 of the Act states that 'applicant' means, "the person who made the request". In this case the request was made on behalf of Eisai Ltd. He considers that it is a valid request because it satisfies the requirements of section 8 of the Act in that it was made in writing, it included the name of the applicant and gave an address for correspondence.

Section 12

31. The Commissioner has considered whether the University has correctly applied section 12 of the Act.
32. Section 12 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."
33. The appropriate limit is set out in the Fees Regulations as £450 for public authorities other than Central Government and Parliament. For the purpose of calculating the appropriate limit an hourly rate of £25 is applied. This equates to 18 hours of staff time. The University may legitimately refuse requests for information if it would take more than 18 hours to:
- a) determine whether it holds the requested information;
 - b) locate the requested information;
 - c) retrieve the information from a document containing it; and
 - d) extract the information from a document containing it.

34. In its letter of 12 September 2007, the University provided the Commissioner with a description of how the information is held and an account of the activities it would have to undertake in order to comply with the complainant's request.

Section 17

35. In relation to the refined request dated 15 February 2006, the University failed to inform the complainant, within the time for compliance that it was relying on section 12. The University therefore breached section 17(5) of the Act.

Information held by SHTAC.

36. **8 Box Files:** These files contain, amongst other things, administrative information, project management data, background papers, included studies, excluded studies and draft reports. This information is filed under broad categories. To locate the relevant information within these files the University would need to determine whether the documents were used in the A2000 study and/or the Loveman et al report. The University concluded that it would take 2.5 hours to locate relevant information within these box files. This is based on an estimate that it would take approximately 20 minutes to examine the contents of each box file.
37. After locating information relevant to the A2000 study, the University asserts that it would need to extract it from material not considered relevant to the request. The University estimates that this extraction would take 3 hours.
38. **Electronically Archived Data:** The 784 electronic files are stored in folders ordered by subject divisions. These divisions include; project management, protocols, search strategy, searches, data extraction, working documents and health economy. Each folder may contain a range of materials, including text documents, spreadsheets and databases. The electronic files represent 346 megabytes of information, equivalent to over 20,000 A4 pages. To retrieve all the information relevant to the A2000 study, the University estimate that it would take approximately 26 hours to open and check each file. The University estimate that it would take approximately 2 minutes per file to undertake this activity.
39. **953 Received emails:** The University estimate that it would take 5.3 hours to locate and check the contents of the emails it received in relation to the A2000 study.
40. The University provided details of other costs it would incur if it was to satisfy the request. The Commissioner accepts the University's estimates described in paragraphs 34 – 37. He has not considered this additional information since the cost limit threshold has already been exceeded. The Commissioner notes however that the additional costs also fall within the scope of the allowable activities described in the Fees Regulations.

Section 16

41. Section 16 states:

“(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.

(2) Any public authority which, in relation to the provision of advice or 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.”

42. Under the Code of Practice, where an authority refuses to comply with a request for information under section 12 of the Act i.e. the “appropriate limit”, it 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 the request, information may be able to be supplied for a lower, or no, fee. The Commissioner considers that it would have been reasonable to expect the University to consider providing an indication of what it could provide within the appropriate limit.

43. The Commissioner accepts that the University signalled its willingness to provide advice to the complainant by asking him to provide specific indications of the information he would like. However, the Commissioner notes that the University failed to provide any indication of the information it holds relevant to the request, and in effect placed the burden of section 16 onto the complainant. The complainant was not in a position to define specific information without first being informed of the types of information held. It is quite possible that the complainant would have been able to further refine his request beyond limiting it to the information held by SHTAC, and thereby to bring it within the cost limit.

The Decision

44. The Commissioner’s decision is that the public authority is not obliged to comply with the requirements of section 1(1)(b) of the Act in respect of the complainant’s revised request by virtue of 12 of the Act. He is satisfied that the cost of compliance with this request would exceed the appropriate limit of £450.

45. However, the Commissioner has also decided that the University failed to provide advice and assistance to the complainant and therefore breached section 16 of the Act.

Steps Required

46. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.
47. In line with its duty under section 16 of the Act, The Commissioner requires the University to contact the complainant and to advise him of the types, forms and extent of the information it holds relevant to his request. The University should advise the complainant of what information it can provide within the cost limit. In the event that a sufficiently narrowed request is agreed the University should either provide the relevant information or issue a Refusal Notice in line with section 17.

Failure to comply

48. 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

49. 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@tribunals.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 13th day of February 2008

Signed

Steve Wood
Assistant Commissioner

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

Legal Annex

General Right of Access

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.”

Time for Compliance

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.”

Exemption where cost of compliance exceeds appropriate limit

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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

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.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”