

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 May 2009

Public Authority: Buckinghamshire County Council
Address: County Hall
Walton Street
Aylesbury
Buckinghamshire
HP20 1UU

Summary

The complainants requested statistical information about the operation of the 11+ system in Buckinghamshire schools. The Council provided some information but refused to provide certain other information on cost grounds (an implicit reference to section 12). It also refused other information on the grounds that it was third party personal information, the release of which would contravene the Data Protection Act (the exemption under section 40(2) of the Act, although not specifically cited by the Council). The Commissioner decided that the Council was entitled to rely on section 12 to withhold the requested information. However, he found that the Council was incorrect to rely on section 40(2) and had committed a number of procedural errors, and was in breach of sections 1(1)(b), 10(1), and 17(1),(5) and (7) 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. A related complaint is being dealt with under case reference FS50160381.

The Request

2. On 7 June 2006, the complainants asked the Council (in relation to 2005) for the numbers of children (split between state and independent schools):-

- taking the 11+ tests;
- reaching the required mark for an automatic Grammar School placing;
- going to appeal;
- successful at appeal.

They also requested:

- for all possible combinations of the variables 'academic potential' and 'attitude to work' on the Head's summary sheet, the overall numbers of children awarded each combination and the split between state and independent schools for each combination;
- a breakdown of successful appeals against the strength of Heads' recommendation (academic potential and attitude to work).

The complainants said that they accepted that some of the required correlations above may need to be derived from raw data provided and that the raw electronic form of the data was preferable, if possible.

3. The Council replied on 7 July 2006, providing two tables. The first table contained the number of children taking the test, reaching the required mark, going to appeal and being successful at appeal, broken down over LA sector schools, partner schools in country (all independent) and non-Bucks schools (mixed states). The second table contained the overall recommendation profiles of headteachers, and the selection appeal outcomes, broken down over LA sector, partner schools in county (not divided into area as the numbers are very small) and non-Bucks schools. However, where data produced statistics of less than five, then, in keeping with advice from the former Department for Education and Skills (DfES), that was what was indicated. The Council said that it could not release base data in relation to all of the request as to the complainants as all of the statistics were produced on datasets where individual children could be identified.
4. In an email to the Council on 11 July 2006 the complainants sought clarification of the Council's responses, disputing the accuracy of the information in the tables, and made further, related, information requests. The Council responded on 1 August 2006 providing further statistics in relation to the additional requests and explaining why certain other statistics would not tally. On 21 August 2006, the complainants asked the Council how many appeals' summary sheets came to appeal with a modified recommendation, compared with that provided in the Order of Suitability. Also on that date they pursued their request for precise figures, rather than using 'less than five', saying that, in the 1 August letter, the Council had given some specific low numbers and contending that there was no way in which they could identify individuals from the release of the numbers.
5. On 29 September 2006 the complainants met the Council's Head of Policy, Planning and Performance (Schools) primarily to discuss the complainant's concurrent 11+ administration grievances but also to clarify what issues the complainants wished to have addressed under the Act.
6. On 2 October 2006 the Council responded to some of those issues, saying that a further reply would be forthcoming. It maintained that the use of 'less than five' in

tables was its common practice, supported by a recent decision of the Scottish Information Commissioner, to ensure compliance with the Data Protection Act. The Council said that it accepted that the complainants could probably not identify individuals from the data, but this was not to say that others could not, and the Council believed that it was good practice to treat all such tables consistently. As to the request for the number of modified recommendations, the Council said that these were not figures that it systematically collected and analysed. The only way it could provide the figures would be by going through the individual files of some 900 pupils. The Council said it was reluctant to do this, 'as this would take longer than is allowed under the Freedom of Information Act'. The Council said that there was a limit to the amount of time that an organisation was required to spend on one request, and that:

"the appropriate limit, as it is known, allows for an authority to spend 18 hours on one request or requests on the same or similar matter. Beyond this limit public authorities are entitled to refuse to respond further".

7. In a further response on 13 October 2006 the Council acknowledged that there had been a discrepancy in the figures it had provided to the complainants on 7 July 2006, and provided revised tables. As regards the 'modified recommendation' request, the Council said that:

" it is only where a head teacher's 'order of suitability' is received, showing the level of recommendation, that the information is imported to our database, as we only collect it in order to provide this information to the appeal panel. Where a head teacher submits recommendations at appeal, but has not previously completed an order of suitability listing, this data is not added to our records. Therefore, whilst the database shows success at appeal with no recommendation recorded, in reality on the appeal documentation, the head teacher's recommendation is usually included. I think this therefore clears up your final queryas I cannot report to you any of the recommendations appearing for the first time at appeal as we do not record this information."

8. On 17 October 2006 the complainants complained to the Council Complaints Officer. This complaint crossed with the Council's letter of 13 October 2006, but the complainants made it clear to the Council in subsequent email reminders on 5 November 2006 and 16 November 2006 that they were still expecting a response. In its email of 20 November 2006 the Council said that the complainants would receive a response by the end of that week. Despite that undertaking, and further reminders from the complainants on 5, 11 and 13 December 2006, it did not reply.

The Investigation

Scope of the case

9. On 1 June 2007 the complainants contacted the Commissioner to complain about the way in which their requests for information had been handled, mentioning the

time taken by the Council to deal with their requests. Since, at that time, the complainants had not enclosed any documentation in support of the complaint the Commissioner asked them to provide the relevant paperwork.

10. On 7 July 2007 the complainants again contacted the Commissioner, enclosing relevant documents. In addition to the handling issues, the complainants specifically asked the Commissioner to consider the following points:
 - (i) in the tables provided by the Council following the complainants' 7 June 2006 information request, it wrongly failed to provide precise information in data cells where the relevant figure would be less than five;
 - (ii) as to the 21 August 2006 request, the Council wrongly failed to provide the number of appeals' summary sheets that came to appeal with a modified recommendation compared with that provided in the Order of Suitability.

These issues are within the scope of this investigation.

11. The complainants have also raised the issue of the Council's failure to reply to their complaint of 17 October 2006, which equates to a request to the Council to review its decisions set out in its refusal notices of 2 and 13 October 2006. A public authority is not required by the Act to carry out an internal review. Rather, the only statutory requirement in relation to such a review is set out in section 17(7)(a), which provides that a refusal notice issued under sections 17(1), (3) and (5) must contain details of any procedures 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. This issue is addressed in the 'Other Matters' section of this Notice.

Chronology

12. On 4 December 2008 the Commissioner contacted the complainant setting out the issues that fell within the scope of the investigation. Also on that date, the Commissioner contacted the Council, seeking its relevant papers and comments. The Commissioner noted that, although not specifically mentioned by the Council, it appeared that it might be seeking to rely on the exemption in section 12 of the Act ('exemption where cost of compliance exceeds appropriate limit') as its basis for withholding the 'modified recommendation' information. If that was the case, the Commissioner asked the Council to set out details of the processes and costings for locating and retrieval of that information. The Commissioner also asked the Council if it had replied to the complainant's letter of complaint of 17 October 2006, and for its reasons if no reply had been issued.
13. On 8 December 2008 the Council provided the Commissioner with a log of its correspondence with the complainants covering the complainants' information requests and other concerns about the operation of the 11+ system. On 7 January 2009 the Council provided its full response to the Commissioner's enquiries. It asked that the Information Commissioner take into account the volume, style, length and overlapping nature of the complainants' requests, correspondence and complaints, which, it argued made errors inevitable.

14. As regards the 'modified recommendation' information requested by the complainants, the Council referred to its letter of 13 October 2006 and said that it did not hold that information. It also added that appeals hearings are independent of the Council and should be considered a tribunal under the Administrative Justice and Tribunals (Listed Tribunals) Order 2007. It quoted the Commissioner as having observed that:
- “What you do need to consider for the purposes of the FOIA, before considering the application of any exemptions, is what information is held by the Local Education Authority (LEA) as part of its functions and what information is held by the LEA on behalf of the Appeals Panel as a tribunal. Any information held on behalf of the tribunal is not subject to FOIA. The courts and tribunals themselves have a separate identity and are not defined as public authorities. The provisions of FOIA have an impact only on that information held by the LEA as part of its own functions, not information held on behalf of another”.
15. As regards the complaint of 17 October 2006, the Council said that, in view of a refusal by the Local Government Ombudsman (LGO) to take on a complaint about the Council's administrative actions, it had decided that it would not respond in any detail to the complainants' 11+ related Freedom of Information complaints.. The Council considered them to be vexatious or frivolous complaints “similar to section 50(2)(c) of the FOI Act”.

Findings of Fact

16. In its initial response of 2 October 2006 to the complainants' request for the number of appeals' summary sheets that came to appeal with a modified recommendation, the Council said that the only way it could provide the figures would be by going through the individual files of some 900 pupils, which it was reluctant to do 'as this would take longer than is allowed under the Freedom of Information Act' (i.e the cost of complying with the request would exceed the appropriate limit (section 12)).
17. On 13 October 2006 the Council changed its position, saying that the information it held was not complete, as modified recommendations appearing for the first time at appeal were not recorded.
18. In its response to the Commissioner's enquiries, the Council said that it did not hold the information sought by the complainant and, at that late stage (some two years after the information request), drew attention to the fact that the Appeals Panel was a Tribunal and contended that the information sought by the complainants was held by the Council on behalf of the Appeals Panel and is not covered by the Act.
19. In view of the Council's initial response to the complainants' request, which was to the effect that the information could be located if 900 pupil's records were

checked, the Commissioner finds as a fact that the Council holds the numbers of some of the appeals' summary sheets that came to appeal with a modified recommendation. However, the Commissioner also finds that the Council does not hold the number of all such modified recommendations, since head teachers' recommendations can be made for the first time directly to the Appeals Panel, and the Council is not notified when that has occurred.

20. The Commissioner does not dispute that the Appeals Panel is a Tribunal within the terms of the Administrative Justice and Tribunals (Listed Tribunals) Order 2007, and is independent of the Council. The information that the Council does hold, is retained in pupils' files, and there is no suggestion that the information would be deleted once the appeals process was exhausted or that it is otherwise held improperly. The Commissioner therefore finds that the information is not held on behalf of the Appeals Panel, but is held by the Council as part of its functions and duties. The Commissioner considers that the pupils files are held for the Council's own purposes and as the requested information is contained within these files that the information is held by the Council. Although the information may also be held by the Appeals Panel, it does not alter the fact that the Council also holds this information for its own purposes. The Commissioner does not consider that there is any evidence that the information is only held on behalf of the Appeals Panel. It is therefore subject to the provisions of the Act.
21. The question as to whether the information should be released to the complainant or whether it is exempt from disclosure under the provisions of section 12 of the Act is discussed below.

Analysis

22. The full text of the relevant legislation can be found in the Legal Annex to this Decision Notice. However, the salient points are set out below.

Procedural matters

Section 1(1) (General right of access) and Section 10 (time for compliance)

23. Section 1(1) of the Act provides that any person making a request for information to a public authority is entitled to (a) 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. Under section 10(1), a public authority must inform a person making a request for information whether it holds the information requested, and communicate that information to the applicant, no later than the twentieth working day following the date of receipt.
24. As regards the complainants' information request of 7 June 2006 (paragraph 2 above), the Council responded on 7 July 2006, providing the complainants with tables of information. On 11 July 2006 the complainants queried the information provided in the tables, saying that it was inaccurate. It was not until 13 October 2006 that the Council accepted that it had made an error and provided the

complainants with the correct information. By failing to provide the complainants with correct information until that date, which was more than twenty working days after the information was requested, the Council breached the requirements of section 1(1)(b) and section 10(1) of the Act. The Council also breached 10(1) by failing to comply with section 1(1) in relation to the 'modified recommendation request within the statutory time frame.

Section 12 (Cost limit)

25. Section 12(1) of the Act does not oblige a public authority to comply with a request if the authority estimates the cost of complying with the request would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004 set a limit of £450 to the cost of complying with a request for public authorities such as the Council. The cost is calculated at a rate of £25 per person per hour, which is equivalent to 18 hours of staff time. The figure of £450 relates only to the appropriate limit; it does not relate to the fees that a public authority may charge for providing information.
26. In estimating the cost of complying, a public authority can take the following into account:
 - determining whether it holds the information requested;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
27. Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required. The estimate must, though, be sensible, reasonable and supported by cogent evidence as confirmed by the Information Tribunal in *Roberts v the Information Commissioner* (EA/2008/0050). What amounts to a sensible and reasonable estimate can only be considered on a case by case basis.
28. With regard to the complainants' 'modified recommendation' request, the Council has explained in its letter of 13 October 2006 to the complainant that the information is not held on its database. In its letter of 2 October 2006 it said that the only way in which it could provide the complainants with the information they seek would be to undertake a manual search of the files it holds on 900 pupils, in effect saying that it was reluctant to do because the cost of so doing would exceed the appropriate limit. The Commissioner finds the Council's assessment to be reasonable. To locate and retrieve the 900 files and then to establish whether or not they contain appeals' summary sheets that came to appeal with a modified recommendation and then to count them would be likely to take more than 18 hours (18 hours = 1080 minutes – which would allow slightly more than one minute per file).
29. The Commissioner, therefore, considers that the provisions of section 12(1) are satisfied and, to the extent that the Council holds that information (see paragraph 19 above), it is not required to provide the information sought by the complainant.

Section 17 (Refusal of request)

30. Under section 17(1) of the Act, a public authority that is to any extent relying on a claim that any information is exempt information must, within the time limit set out in section 10(1), give the applicant a notice that states that fact, specifies the exemption in question, and states (if not otherwise apparent) why the exemption applies.
31. In the Council's response of 7 July 2006 to the complainants' information request of 7 June 2006, it provided the complainants with tables of information, but withheld precise numbers in data cells where those numbers were less than five. It said that this was in keeping with advice from the (then) Department for Education and Skills, and that it could not release base data as all of the statistics were produced on datasets where individual children could be identified. The Council did not specify the exemption from the Act on which it was relying to withhold the specific numbers from data cells, nor did it inform the complainants of their right to request an internal review and, if they remained dissatisfied, to complain to the Information Commissioner. The Commissioner therefore finds that the Council in its refusal notice failed to comply with sections 17(1) (b) by failing to specify the exemption in question, 17(1)(c) by failing to explain why the exemption applies and 17(7).
32. As to the 'modified recommendation' information request of 21 August 2006, the Council did not respond until 2 October 2006, declining to provide the information, in effect on the grounds that the cost of complying with the request would exceed the appropriate limit (section 12). The Council has acted in breach of sections 17(1) as the response was outside of the statutory time frame, 17(1)(b) and (c) as it failed to specify the exemption in question and explain why it applied and 17(5) and 17(7) as it failed to specify in its refusal notice that it was relying on section 12, or to notify the complainants that they could seek an internal review, and thence complain to the Commissioner.

Exemption: Section 40(2) (Personal Data)

33. The Council has refused to provide the complainants with precise numbers in data cells in the various tables released to them where those numbers are less than five. It has argued that this is its common practice to ensure compliance with the DPA, and said that this line is supported by a decision of the Scottish Information Commissioner. The Council has recognised that the complainants could probably not identify individuals from the data, but concluded that that was not to say that others could not identify them. Although not specifically cited by the Council, its arguments amount to a contention that the exemption in section 40(2) allows the withholding of precise statistics.
34. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the DPA.

35. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines 'personal data' as:

"...data which relate to a living individual who can be identified

- a) from those data, or
- b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual".

36. It is clear that statistics relating to children taking 11+ tests, appeals against the outcome, and the head teachers comments/recommendations made about the children, if linked to identifiable individuals, are personal data under the terms of the DPA. The question to be determined is whether a living individual can be identified from that data.

37. Decisions of the Scottish Information Commissioner are not binding on the Information Commissioner, but are of evidential value. In the particular case cited by the Council (decision 021/2005) the complainant had sought information relating to incidences of childhood leukaemia, but the public authority had suppressed cells in tables containing less than 5 cases. In that case the Scottish Information Commissioner concluded that in small geographical areas the residents will know more about each other. In the particular case in question he considered it likely that an individual may be aware that a child has cancer but not know the specific diagnosis; the disclosure of the data could lead to a confirmation of a particular diagnosis. He concluded that a living individual could be identified from the data, and it was therefore 'personal data' as defined by the DPA.

38. The Commissioner considers that truly anonymised data is not personal data and thus there is no need to consider the application of the data protection principles to its disclosure. The Commissioner considers that even where the data controller holds additional 'identifying' information, this does not prevent them from anonymising information to the extent that it would not be possible for anyone else to identify any living individual either from that information alone or from the information taken together with other information available to them. The test of whether information is truly anonymised is whether a member of the public could reasonably identify the individuals by cross-referencing the data with information or knowledge already available to them. This approach is supported by paragraphs 24 and 25 of Lord Hope's judgement in the House of Lords' case of the Common Services Agency v Scottish Information Commissioner (2008) UKHL 47,

"..Rendering data anonymous in such a way that the individual to whom the information from which they are derived refers is no longer identifiable would

enable the information to be released without having to apply the principles of [data] protection.”

39. The Commissioner has considered the findings in this case but does not believe that the council have provided any evidence that there is a risk of the children in question being identified. The Council have simply stated that there is a risk. The Commissioner is of the view that for an individual to use the withheld information to identify a child a considerable amount of additional knowledge about that child would be needed such as whether or not the child took the test, their age at the time of taking the test and gender, information which is not currently available. In the Commissioner's view the Council have not demonstrated that, given the number of children taking the 11+ test, there is a reasonable likelihood of a child being identified from the information requested in this case. The Commissioner has considered whether a member of the public could identify the individuals but does not believe that the anonymised data could reasonably be linked to an individual using additional information.
40. The Commissioner has also considered the Office of National Statistics guidance (ONS) and notes that the ONS guidance states that simply because a cell contains small numbers it is not automatically suppressed. The ONS guidance makes it clear that a public authority should consider each case on its merits before applying the relevant guidance.
41. Having taken all the points into account the Commissioner has concluded that the requested information is not personal data and as such section 40(2) of the Act is not engaged.

The Decision

42. The Commissioner's decision is that the Council dealt with the following aspects of the request in accordance with the Act:
- 1) Concluding that the cost of providing the complainants with the number of appeals' summary sheets that came to appeal with a modified recommendation would exceed the appropriate limit and that section 12(1) is therefore engaged.
43. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- 1) the Council breached the requirements of sections 1(1)(b) and 10(1), in failing to provide the complainants with a correct response to their information request of 7 June 2006 until 13 October 2006 and in failing to comply with the 'modified recommendation' request.
 - 2) the Council breached the requirements of sections 17(1)(b) and (c) and (7) of the Act, in failing to specify in its refusal notice that it was relying on the exemption in section 40(2) to withhold the specific numbers from data cells and in failing to inform the complainants of their right to request an internal

- review and, if they remained dissatisfied, to complain to the Information Commissioner;
- 3) the Council breached the requirements of sections 17(1) (a) (b) and (c), (5) and (7) of the Act, in failing to specify in its refusal notice that it was relying on the provisions of section 12 to withhold the number of modified appeals' summary sheets and in failing to inform the complainants of their right to request an internal review and, if they remained dissatisfied, to complain to the Information Commissioner.
 - 4) The Council incorrectly relied upon section 40(2) to withhold the specific numbers from the data cells.

Steps Required

44. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
 - Disclose to the complainant the specific numbers withheld from the data cells under section 40(2).

Other matters

45. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following issues.
46. On 17 October 2006 the complainants complained to the Council Complaints Officer. This should have been regarded by the Council as a request for a review of its 2 October 2006 and 13 October 2006 decisions. Despite a number of reminders, and at least one undertaking to do so, the Council did not reply. In response to the Commissioner's enquiries, the Council said that in view of a refusal by the LGO to take on a complaint about the Council's administrative actions, it had decided that it would not respond in any detail to the complainants' 11+ related Freedom of Information complaints as the Council considered them to be vexatious or frivolous complaints "similar to section 50(2)(c) of the FOI Act".
47. As explained in paragraph 11 above, a public authority is not required by the Act to carry out an internal review. However, Part VI of the section 45 Code of Practice ('the section 45 Code') makes it a desirable practice for public authorities to have in place a procedure for dealing with complaints about its handling of requests for information. Paragraph 40 of the Code stipulates that where (as in this case), the complaint concerns a request for information under the general rights of access, a review should be undertaken by someone senior to the person who took the original decision, where this is reasonable practicable. It goes on to say that the public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint.

48. It is clear from the Council's response to the Commissioner that a complaints procedure exists within the Council. The Council appears to have made a conscious decision not to reply to the review request, on the basis of a conclusion reached by the LGO on a matter outside the scope of the Act, which has no bearing on the Council's responsibilities under the Act. This is a matter of concern to the Commissioner.
49. The Council said that it considered the matters covered by the 17 October 2006 letter to be vexatious or frivolous complaints "similar to section 50(2)(c) of the FOI Act" (which applies to the Commissioner, not public authorities). While it was open to the Council to refuse to comply with a request for information if it believed that the request was vexatious (section 14(1) of the Act), this provision can only be invoked at the time when a request for information is being considered, not retrospectively at the time when a request for a review, or for the initiation of a public authority's complaints' procedure, is received. The Council's failure to recognise this is a further cause for concern.
50. The Commissioner expects that complaints which relate to the Council's handling of requests for information will, in future, be handled in accordance with the recommendations of the section 45 code. The Commissioner would also wish to direct the Council to his own guidance (published on 16 February 2009) which provides further recommendations for good practice in relation to internal reviews.

Right of Appeal

51. 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.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 18th day of May 2009

Signed

**David Smith
Deputy 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.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, 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.”

Section 17(7) provides that –

“A notice under section (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 such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –
“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI. No.3244)

Regulation 3 provides that –

“(1) This regulation has effect to prescribe the appropriate limit referred to insection 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part 1 of Schedule 1 to the 2000 Act, the appropriate limit is £600”.

Regulation 4 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 for-

(a)...

(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 reasonable 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.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.”