

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 13 May 2009

**Public Authority:** Cabinet Office  
**Address:** 26 Whitehall  
Ripley Building  
London  
SW1A 2WH

### Summary

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The complainant asked the Cabinet Office for information about certain requests made under the Freedom of Information Act 2000 for a specified period. The Commissioner found that the Cabinet Office had acted correctly in refusing the request under section 12 of the Act as the appropriate limit would have been exceeded. He also found that the Cabinet Office was in breach of its duty under section 16(1) of the Act to advise and assist the complainant.

### 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 full text of relevant legislation is set out in the Legal annex to this Notice.

### Background

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2. On 29 October 2007 the Commissioner reached a decision on an earlier complaint made by the complainant against the Cabinet Office (case ref: FS50087614). The Commissioner concluded that the Cabinet Office should release to the complainant, for all FOIA cases referred to its Histories, Openness and Records Unit (HORU) by the (then) Department for Constitutional Affairs (DCA) (now Ministry of Justice (MoJ)) Clearing House since 1 January 2005 up to the date of the complainant's information request on 17 March 2005:

- 1) Name of originating department;
- 2) MoJ Clearing House file number;

- 3) HORU file number;
- 4) Date received by HORU;
- 5) Date closed by HORU ;
- 6) Summary or description of request.'

The Cabinet Office provided that information.

## The Request

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3. On 1 January 2008 the complainant asked the Cabinet Office, in relation to requests referred from the FOI Central Clearing House to the Cabinet Office between January 1 2005 and December 31 2007, for certain data, to be provided in Excel format, or as a tab-delimited text file. The subject headings requested were the same as those identified by the Commissioner in the previous Decision Notice. The complainant said that he would be pleased to discuss the request at the Cabinet Office's convenience.
4. On 30 January 2008 the Cabinet Office replied, saying that it estimated that the cost of complying with the request would exceed the appropriate limit of £600. It referred to the earlier similar information request mentioned above, from which, it said, the complainant would know that information was held on the Cabinet Office's case management system, Correspondence for Windows.
5. The Cabinet Office said that, because of how the information was stored, it was not possible simply to print off the information the complainant had requested from the database, and went on to explain the processes that would be necessary, which it estimated would take 10 minutes per referral. It had identified 511 cases, which would amount to slightly over 85 hours to collect the information, well over the 24 hours set out in regulations under section 12 of the Act. It said that, if the complainant were to narrow his request down to the number of records that it believed could be searched within the appropriate limit, it may be that the Cabinet Office could comply with the request (although this was not guaranteed). It said that it would be willing to search 144 cases (which would take the 24 hours permitted), but that some information was exempt under section 21 because the information was accessible by other means (the Cabinet Office had already provided the complainant with the information for the period 1 January 2005 to 13 April 2005). The Cabinet Office suggested that the complainant refine his request for the first 144 cases from 13 April 2005 onwards, requesting a further 144 cases no less than sixty days later.
6. On 16 February 2008 the complainant sought a review, saying that the duty to assist (section 16) had not been fulfilled, because no effort was made to contact him before a decision was made. He recognized that the Cabinet Office's decision provided advice on how future requests might be framed, but he contended that "the duty to assist pertains to requests that have been made and are being processed. This is clear from the language of the statute and the Code of Practice, which contemplates conversations about ways in which a request might be adjusted rather than simply refused." He listed questions that might have

been addressed if an effort had been made to engage in conversation. He also complained that, in calculating the cost of compliance, the Cabinet Office had not contemplated all methods of extracting data from the database. In particular, there was no evidence that it had consulted its technical staff to determine whether the data could be extracted directly from the database, rather than being 'cut and pasted' by non-technicians.

7. On 2 April 2008 the Cabinet Office responded. It maintained its position that the cost of complying with the request would exceed the appropriate limit, and said that section 16 did not require public authorities to contact those who request information in advance of any decision being made. Nor did the Code of Practice. As to the complainant's second point, the Cabinet Office cited the decision of the Information Tribunal in *Michael Johnson v the Information Commissioner* (Tribunal reference EA/2006/0085) in which it said that the Tribunal implied that where data has to be created or extracted it only needs to be done with minimal skill. The Cabinet Office did not consider that consulting with and getting the assistance of technical staff to extract data constituted minimal skill and was accordingly not required by the Act.

## The Investigation

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### Scope of the case

8. On 27 May 2008 the complainant emailed the Commissioner to complain about the way his request for information had been handled (the complaint was not received at that stage, and the complainant re-submitted the email on 10 June 2008). The complainant specifically asked the Commissioner to consider the following issues:
  - that the Cabinet Office has continued to misinterpret the duty to assist, and ought to have extended the courtesy of a telephone call to discuss a request before it is dismissed. He referred to the Commissioner's decision in FS50107607 which addressed this matter (this decision was the subject of an appeal by the complainant to the Information Tribunal, decision reference EA/2008/0050);
  - the Cabinet Office's refusal to seek advice of specialists on how data might be extracted from the relevant database, even those whose advice would ordinarily be available on technical matters. He contends that the Cabinet Office had misinterpreted the Tribunal's decision in the 'Johnson' case (paragraph 7 above) in its internal review, and that it is often possible to extract data more quickly than in the manner relied upon in the Cabinet Office's response.

### Chronology

9. On 6 November 2008 the Commissioner contacted the Cabinet Office seeking its comments on the contentions made by the complainant, in particular, asking:

- a. if some of the requested fields were dropped from the information request (as suggested by the complainant), presumably the process would be simplified and thus less time consuming, and, if so, which fields would need to be dropped;
  - b. whether the Cabinet Office's case management system (Correspondence for Windows) generated standard reports that might contain some of the requested information, and, if so, what information, and would the Cabinet Office be prepared to release it to the complainant;
  - c. as the Tribunal's decision in the 'Johnson' case does not specifically say that only information that needs minimal skill to extract should be provided, whether technicians ordinarily available to the Cabinet Office could extract the data from the underlying database without the need to 'cut and paste' data; if so, what effect would that have on the estimated costs.
10. After a number of reminders, on 19 January 2009 the Cabinet Office replied. It said that it would be a simpler and less time consuming process if the information requested did not include all the details that the complainant asked for in his request of 1 January 2008. It accepted that it could have suggested that he refine his request to only ask for a more limited category of information (for example the name of the originating department and the summary of the request). However, the Cabinet Office said that, based on the complainant's previous request and complaint to the Commissioner (see paragraph 2 above) it understood that it was these specific data fields that the complainant was interested in. It therefore suggested to the complainant that he refine his request by date and not by subject area. The Cabinet Office said that it had been open to the complainant to request a more limited category of information following its initial response of 30 January 2008 or its response of 2 April 2008 to his review request, but he had not done so. The Cabinet Office contended that this supported the argument that it was the specific figures requested that he was seeking, and it was therefore reasonable and legitimate to suggest the complainant refine his request by time.
11. The Cabinet Office said that its case management system did not generate standard reports that might contain some of the requested information. It said that the case management system is unable to generate any reports for cases logged as 'Clearing House' cases, and that the system is not designed to do so as there is no business need for it.
12. The Cabinet Office also said that its IT support staff would not be able to extract all the data from the underlying database without the need to 'cut and paste' information. While its IT support staff could run a programme that allows them to extract all the data entered in certain fields in the database to an Excel spreadsheet, as had been explained to the complainant, in a number of cases the information in the data fields is incomplete, and the individual case files would need to be examined. The Cabinet Office said that, for example, it may be that some of the data is held electronically elsewhere within the case file but it is possible some information may only have been stored in a hard copy file. It said that even if some of the information could be extracted by its IT support staff it

might still require someone to manually go through the individual case files and confirm details are correct. For example, the field containing the 'summary or description of the request' often only contains a very brief statement of the request and may not give a truly accurate description. The Cabinet Office said that allowing its IT support staff to extract certain data would therefore have no effect on the estimated time it would take to find all of the information requested, as some fields are not searchable and the ones that are would still need to be checked in every case to ensure that the information was correct.

13. The Cabinet Office commented that it had approached the complainant's information request from its experience of his previous complaint to the Commissioner (see paragraph 2 above) and offered advice and assistance that would enable him to receive the information requested, albeit not all at once. It contended that, given these circumstances, it did indeed offer a reasonable and appropriate degree of advice and assistance.
14. The Commissioner telephoned the Cabinet Office on 6 May 2009 and on 11 May 2009 to discuss the application of section 12 and the estimate of the cost limit in more detail.

## Analysis

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### Procedural matters

#### **Section 12 - exemption where cost of compliance exceeds appropriate limit**

15. 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 ('the Fees Regulations') set a limit of £600 to the cost of complying with a request for government departments. The cost is calculated at a rate of £25 per person per hour, which is equivalent to 24 hours of staff time. The figure of £600 relates only to the appropriate limit; it does not relate to the fees that a public authority may charge for providing information.
16. Under regulation 4(3) of the Fees Regulations, 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.
17. Section 12 makes it clear that a public authority does not have to make a precise calculation of the cost of complying with a request. In paragraphs 9 to 13 of the decision in the case of *Roberts v the Information Commissioner (EA/2008/0050)* the Information Tribunal made the following points, all of which are endorsed by

- the Commissioner: (i) Only an estimate is required; (ii) the costs estimates must be reasonable and only based on those activities described in regulation 4(3); (iii) time spent on considering exemptions or redaction cannot be taken into account; (iv) estimates cannot take into account costs relating to data validation or communication; (v) the determination of a reasonable estimate can only be considered on a case by case basis; and (vi) any estimate should be sensible, reasonable and supported by cogent evidence.
18. The Cabinet Office, on 2 April 2008, cited the decision of the Information Tribunal in *Michael Johnson v Information Commissioner (Tribunal Reference EA/2006/0085)*. However, the Commissioner notes that the Tribunal in *Johnson* was considering (at paragraph 49) “whether (and to what extent), it would have been necessary for the MOJ to exercise skill and judgement in order to meet the Appellant’s request, *and if so, whether that has bearing on whether the information is “held”*” (emphasis added). In this case both parties accept that the information in question is held, and so the Commissioner considers that the Tribunal’s comments about skill and judgement in *Johnson* are not relevant to the circumstances of this case.
  19. In the present case the Cabinet Office has set out in some detail the processes that it would need to undertake to provide the complainant with the information that he seeks. In its initial response it said that it was not possible simply to print off from the database the information requested. The Cabinet Office explained that a report can be run from the database which would generate some of the information requested. This information would be transferred over to an excel format. The report however would not be complete and it would then be necessary to open each corresponding electronic file or manual file and extract the missing data. It said that within the report run from the database, data specific to the requirements of the complainant’s request are incomplete or inaccurate and it would need to cross reference those database entries with the electronic or manual case file to obtain this information and / or check the entry for accuracy. The Cabinet Office estimated that all of the necessary processes would take an average of 10 minutes for each referral. Its preliminary searches had identified 511 entries on the database falling within the scope of the information request, and thus, based on that estimate, it would mean that it would take 5110 minutes, or slightly over 85 hours, to collect the information requested, which is significantly more than the 24 hours set out in regulations under section 12 of the Act.
  20. The Commissioner, in his telephone conversation with the Cabinet Office dated 6 May 2009 explained that he did not accept that cross referencing the information generated from the database with the electronic or manual case file to check for accuracy or ‘validating’ the information could be taken into account when calculating the cost limit. The Commissioner therefore asked the Cabinet Office to explain in more detail what information could be generated from the database and what information fields would be left blank, he explained to the Cabinet Office that completing these blank fields could be included when calculating the cost limit.
  21. The Cabinet Office explained that of the six fields requested by the complainant fields 1 and 5 would be blank as the report from the database could not generate

- these fields– name of originating department and the date closed by HORU. The Cabinet Office also explained that field 2 MoJ clearing house reference number may also be blank. The Cabinet Office then explained that of the 511 entries on the database 299 of the corresponding files are held manually and 212 electronically, as prior to December 2006 the files were not held electronically. The Cabinet Office estimate that to go to the archive, find the manual files and search through each one for the missing information would take an estimated 10 minutes per file. The Commissioner does not accept that this would be the case for the 299 files held manually. The Cabinet Office previously explained that it would take 10 minutes per file when including the need for validation, which the Commissioner does not accept can be included when calculating the cost limit.
22. In a further telephone conversation with the Cabinet Office on 11 May 2009, the Cabinet Office explained that it now estimated that to review each manual file to find the missing data would only take 2 minutes per file. It explained that the originating department should be near the beginning of the file and the closure date should be towards the end of the file but that some files would need further interrogation to find the missing data. The Cabinet Office explained that it may be for instance that a request spanned more than one department and so more work would be required to establish the originating department. The Cabinet Office also stated that it would take on average 5 minutes to locate and retrieve each file. It explained that the files were held in a large cupboard and filed by case reference number. The database would show the relevant case reference number in every instance as beginning 'CH' and followed by six digits. However, whilst some files will have a matching reference number, some will begin 'FOI' instead of CH depending on the age of file. As an example the Cabinet Office explained they would first search for file "CH251621" this would involve looking through the CH files and finding the relevant one which could take up to between 2 to 3 minutes. If no file was found it would then need to conduct the same search within the FOI files to find FOI251621 as it could be filed under either, this could take a further 2 minutes. In total the Cabinet Office estimate that it would take on average 5 minutes to locate and retrieve each manual file and then 2 minutes to extract the relevant date, a total of 7 minutes per manual file.
23. The Commissioner accepts that it is reasonable to consider that to locate and retrieve each of the 299 manual files would take 2-3 minutes per file where the file was located in the CH run of files, and a further 2 minutes where the FOI run of files also had to be searched. He further accepts that it would take another 2 minutes per manual file to extract the missing information. Further, the Cabinet Office explained that it would take an average of 2 minutes per files to access the electronic files and locate the missing information, which the Commissioner also accepts as a reasonable estimate
24. The Commissioner has also considered the information already disclosed to the complainant in relation to decision notice FS50087614. In this case the Commissioner found that information for the period 1 March 2005 to 17 March 2005 falling within the same 6 headings requested by the complainant in this case should be disclosed and this was provided to the complainant. Included in this information was a 'MoJ case' reference number containing a reference to the originating department (i.e. DCMS 41) and a closure date. The Commissioner

found in this decision notice that this information was held and required the Cabinet Office to disclose this information. However, the Cabinet Office explained that at the time of the previous request, HORU maintained a spreadsheet containing all of the requested information, but that this spreadsheet is no longer held and ceased to be held prior to the complainant's request in this case. The Cabinet Office stated that the only way to provide the information in this case was as described above, by interrogating its database, extracting the data then going through manual and electronic files to complete the blank fields. The Commissioner considers that whilst the spreadsheet may not have been held as at the date of this request, the information disclosed in relation to the previous was.

25. In case FS50087614 there were 69 instances of case referrals between 1 January 2005 and 17 March 2005 where the Cabinet Office provided the complainant with the originating department and the date closed. Therefore, he does not consider that in relation to 69 of the 299 cases where the Cabinet Office assert it would need to go through manual files to provide that information, that this is in fact the case. He considers that instead of a manual file search this information could be easily extracted from the response to the previous FOI request. He therefore considers that in calculating the cost limit the correct calculation should not have been 299 manual files which would need to be searched for the relevant information, as there are 69 instances where this is not necessary as the information is readily available. Using the higher end of the Cabinet Office estimate as outlined in paragraph 22 this leaves 230 files at 7 minutes per file which equals 1, 610 minutes or 26 hours and 50 minutes, plus the 7 hours and 4 minutes to review the remaining electronic files – a total of 33 hours and 54 minutes.
26. The Commissioner has had regard to the complainant's comments in his review application of 16 February 2008 that, in calculating the cost of compliance, the Cabinet Office had not contemplated all methods of extracting data from the database. In particular, there was no evidence that it had consulted its technical staff to determine whether the data could be extracted directly from the database, rather than being 'cut and pasted' by non-technicians. He has also considered the complaint that the Cabinet Office had refused to seek advice of specialists on how data might be extracted from the relevant database, even those whose advice would ordinarily be available on technical matters.
27. In paragraph 15 of its decision in *Roberts v the Information Commissioner (EA/2008/0050)* the Tribunal said that  
*“(a) the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;  
(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate....”*

Those circumstances were set out in paragraph 13 where the Tribunal said:



*“... It is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the alternative or had it drawn to its attention by the requestor or any other third party.....”*

28. The Commissioner therefore concludes that a cost estimate will only be disregarded if it fails to consider an absolutely obvious alternative means of extracting the requested information. For the reasons given in paragraphs 11 and 12 above the Cabinet Office said its case management database is unable to generate any reports for cases logged as ‘Clearing House’ cases, and that the system is not designed to do so as there is no business need for it. It further said that its IT support staff would not be able, as had been suggested by the complainant, to extract all the data from the underlying database without the need to ‘cut and paste’ information. While its IT support staff could run a programme that allows them to extract all the data entered in certain fields in the database to an Excel spreadsheet, as had been explained to the complainant, in relation to the data requested in fields one and five the information would be blank because this information had not been input into the database, and the individual case files would need to be examined. The Commissioner finds that apart from in relation to extracting information from the previous FOI disclosure, there is no indication that the Cabinet Office has failed to consider any obvious alternative to the method it employed in estimating the costs of complying with the complainant’s information request.
29. In view of the processes described by the Cabinet Office that would have to be undertaken to comply with the information request, the Commissioner considers although the original estimate provided by the Cabinet Office was not reasonable and supported by cogent evidence, the revised estimate set out in this notice is, and the Cabinet Office is not required to comply with that request. In reaching this view the Commissioner has considered that the blank fields which need to be completed are the name of originating department, closure date and in some cases the clearing house reference number. The Commissioner recognises that in some cases the summary may contain details of the originating department but not in every case. In light of this the Commissioner accepts that, using the higher end of the estimated figures provided in paragraph 22, to complete the blank fields described above would take, in relation to the 230 manual files, approximately 7 minutes per file and, in relation to the 212 electronic files, 2 minutes per file, taking a total of 33 hours and 54 minutes. The Commissioner has also considered that even if he were to only accept that it would take the Cabinet Office 2 minutes to locate each manual file with a CH reference (the lower end of the Cabinet Office’s estimate) and a further average of 1 additional minute to locate the FOI files (the reduction from an average of 2 minutes per file to 1 minute per file reflecting that the FOI files would only need to be looked for in instances where no CH files were found) that this coupled with the 2 minutes to then extract the relevant date would still take a total of 5 minutes. For the 230 files this would then equate to a total of 1,150 minutes or 19 hours and 10 minutes, plus the 7 hours and 4 minutes to extract the data from the electronic files, taking to a total of 26 hours and 14 minutes. He therefore considers that the Cabinet Office’s estimate that to comply with the request would exceed the appropriate

limit is reasonable. He notes that the estimate must only be reasonable and not exact.

30. The Commissioner therefore accepts that section 12(1) is engaged.

### **Section 16 – duty to provide advice and assistance**

31. Section 16(1) of the Act requires 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 have made requests for information. Section 16(2) provides that any public authority which conforms with the Code of Practice under section 45 ('the section 45 Code') is to be taken as complying with the duty to provide advice and assistance.

32. The complainant contends that the Cabinet Office has continued to misinterpret the duty to assist, and ought to have extended the courtesy of a telephone call to discuss a request before it is dismissed. He referred to the Commissioner's decision in FS50107607 which addressed a similar, although not identical, situation. Paragraph 22 of that decision says:

"The Commissioner believes that public authorities should focus on the information which had been requested, *if necessary seeking clarification from the applicant as to what information is wanted* (emphasis added). He strongly recommends that early contact is made with the applicant and that any advice and assistance is delivered in a clear and intelligible manner. Where a request *has been refused* (emphasis added) on grounds of excessive cost it may well be appropriate for the public authority to assist the applicant in making a subsequent request, for example by establishing a dialogue with the applicant so that the available options can be clearly spelt out and explored."

33. In that case, the Commissioner found that the public authority had not provided adequate advice and assistance. In the present case, the complainant's information request clear and unambiguous. It had followed on from a decision of the Commissioner which required the Cabinet Office to release certain specific categories of information to the complainant for the period 1 January 2005 to 17 March 2005. The current information request was for precisely the same categories of information, but over a substantially longer period. In its comments to the Commissioner the Cabinet Office has said that it understood that it was these specific data fields that the complainant was interested in. It therefore suggested to the complainant that he refine his request by date and not by subject area (see paragraph 5 above).

34. Under the paragraph 14 of the section 45 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 :

- (i) providing an indication of what, in any information can be provided within the appropriate limit
- (ii) advising the applicant that that by refining their request information may be able to be supplied for a lower or no fee

35. The complainant stated that the Cabinet Office should have contacted him prior to refusing the request under section 12. However, there is no requirement under section 16 of the Act, or the section 45 Code, for a public authority to contact a complainant before making a decision on an information request. Further in the Information Tribunal decision *Roberts v the Information Commissioner EA/2008/0050* the Tribunal found that even where advice and assistance is not offered it does not invalidate the section 12 application:

“The relevant part of the Code of Practice ... indicates that the requirement to give advice only arises once the public authority has reached the stage where section 12 applies (“Where an authority is not obliged to comply with a request for information...”). Neither the statute nor the Code of Practice contain any suggestion that avoiding the obligation to comply is conditional on first complying with the Code of Practice or that a public authority must consult with the person seeking information as part of the process by which it reaches an estimated costs figure. This is entirely consistent with the purpose of the Code of Practice, (which is to provide guidance only), and with the language of section 16 itself, (which makes it clear in subsection (2) that the only impact of the Code of Practice is that a public authority which complies with it will be found to have provided the advice and assistance necessary to avoid a breach of subsection (1). “

The Commissioner does not therefore consider that the Cabinet Office were required to offer advice and assistance prior to applying section 12.

36. In assessing whether or not the advice and assistance given by the Cabinet Office complied with section 16(1) of the Act the Commissioner has considered that the information requested duplicated the categories/headings from the previous information provided by the Cabinet Office. The Cabinet Office has said that because of this it had concluded that those categories were of importance to the complainant and thus it had suggested that the complainant refine his request by date rather than by reducing the requested fields. Notwithstanding this, the Commissioner considers that it would have been reasonable in the circumstances of this case to expect the Cabinet Office to advise the complainant how he might be able to bring the request under the costs limit by reducing the range of information requested. He considers that the purpose of providing advice and assistance in relation to section 12 is to assist the complainants in refining requests to the information of most importance to them, without public authorities making assumptions about relative importance on their behalf. In light of this the Commissioner concludes that ‘providing an indication of what, if any, information could be provided within the cost ceiling’ would include advising the complainant of which fields could be omitted from the request in order to bring it under the cost limit. Therefore the Cabinet Office’s advice and assistance did not conform to the section 45 code of practice and did not comply with the requirements of section 16(1) of the Act.

## The Decision

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37. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

(i) the application of section 12(1) to the withheld information

38. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

(i) the provision of advice and assistance was not in accordance with the requirements of section 16(1)

## Steps Required

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39. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

(i) Provide the complainant with reasonable advice and assistance as detailed in paragraph 36 of this notice, in compliance with the section 45 Code of Practice and the requirements of section 16(2), to enable the complainant to submit a new request within the appropriate cost limit, .

40. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Right of Appeal

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41. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 13th day of May 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

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

## Legal Annex

### **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.”

### **Duty to provide Advice and Assistance**

**Section 16(1)** provides that -

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

**Section 16(2)** provides that –

“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.”

### **Issue of Code of Practice by Secretary of State**

**Section 45(1)** provides that –

“The [Lord Chancellor] shall issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of the authorities’ functions under Part 1.”

**Section 45(2)** provides that –

“The code of practice must, in particular, include provision relating to –  
(a) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them,…”

### **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 in ....section 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.”