

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 August 2010

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Summary

The complainant made a request to Devon County Council for a copy of the Operations Maintenance Manual (OMM) for ISCA College. He stated that he did not mind whether the information was provided via CD or electronic transfer. The public authority refused the request, explaining that it did not hold the information electronically and that complying with his request would cost in excess of the statutory limit of £450. During the course of the Commissioner's investigation, the public authority altered the grounds of its refusal, explaining that it considered the complainant's request vexatious under section 14(1) of the Act. The Commissioner upholds the public authority's decision to refuse the request for information as vexatious under section 14(1) of the Freedom of Information Act 2000. By its failure to provide the complainant with a notice within 20 working days, stating its refusal under section 14 of the Act, the public authority has breached section 17(5) of the Act. The Commissioner requires no action to be taken.

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.

Background

2. The complainant had previously made a freedom of information (FOI) request to the public authority which had been refused under section 12 (costs for compliance). The information related to a Private Finance Initiative (PFI) project to build six schools (of which ISCA College, the subject of this request, is one). The request represents a narrowing of his original request for various documents about all six schools, to one set of documents about that individual school.
3. The complainant had argued that the cost should not have exceeded the statutory limit as the information was held electronically and could therefore be provided to him in an electronic format at little expense. The public authority maintained that it did not hold the information in electronic format.

The Request

4. On 10 February 2009 the complainant sent a request for information to Devon County Council (DCC) which read as follows:

"[...] I now wish to downgrade my FOI request for the Operations Maintenance Manual (OMM) for the ISCA College only. I don't mind if it is via CD or electronic transfer."

5. Following further correspondence the public authority wrote to the complainant on 21 April 2009 indicating that his request for information was receiving attention. This was acknowledged by the complainant on 22 April 2009 when various other issues

surrounding his request were also raised. The public authority wrote to the complainant on 12 May 2009, stating that it did not hold the requested information in electronic form and advising him that information conforming to his request would involve the location and retrieval of a large number of documents and consequently it was the public authority's opinion that the cost of compliance with his request would still be in excess of the statutory limit of £450.

6. The complainant wrote back to DCC on 14 May 2009 and the public authority advised the Commissioner that the contents were referred to the County Solicitor for a response. On 9 June 2009 the Commissioner decided to use his discretion to investigate this complaint even though an internal review had not been completed.

The Investigation

Scope of the case

7. On 24 February 2009 the complainant contacted the Commissioner to complain about the way his request for information of 10 February 2009 had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - At the time of making his complaint to the Commissioner, his correspondence had been ignored by the public authority; and
 - that his request of 10 February 2009 was a refined request because his previous request had been refused by the public authority on the grounds of section 12 of the Act (costs for compliance).
8. The complainant also raised other issues, some in subsequent correspondence, that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

9. The complainant made his complaint to the Commissioner 14 days after first sending his request for information to the public authority. It was therefore necessary to allow the public authority sufficient time to provide its response and undertake the various associated processes, including internal review,

given the statutory timescales and the provisions of sections 10, 17, 45 and 50 of the Act.

10. However, following the acceptance of the complaint as valid on 9 June 2009, the Commissioner wrote to the complainant on 31 July 2009, confirming that his investigation would consider only the matters raised in his original complaint, DCC's refusal of the request under section 12 of the Act, and not matters raised in his more recent correspondence which concerned a different request to the same public authority.
11. The Commissioner also wrote to DCC on 31 July 2009, requesting clarification of the public authority's position in respect of any internal review, and also an explanation of its estimate of the costs for compliance with the complainant's request.
12. The complainant replied on 3 August 2009, accepting the scope of the Commissioner's investigation but indicating that he considered his request to be for further documents in relation to ISCA College beyond the Operations Maintenance Manual (OMM), to include a copy of the Project Agreement and the As Built Health and Safety Files for the same college. The complainant further argued that, following a substantial investment in Electronic Document and Records Management (EDRM) systems, these files should be available in electronic format and consequently the DCC's argument for costs was invalid as the cost of retrieval and transmission of the information in electronic form would not exceed the statutory limit. He also commented that a different public authority had complied with a similar request without apparent difficulty.
13. On 17 August 2009 the Commissioner wrote again to DCC, requesting a response to his earlier letter and also clarification regarding the public authority's EDRM systems.
14. The public authority replied on 24 August 2009. It explained that its project to introduce EDRM systems across DCC was not complete, that the information it held requested by the complainant was virtually all paper-based and that the introduction of EDRM systems did not mean that paper records already held would have been transferred into electronic form because the sheer scale of paper-based documentation held would render this impossible.
15. The Commissioner wrote again to the complainant on 24 August 2009, noting that neither the complainant's request of

10 February 2009, nor his complaint to the Commissioner of 24 February 2009 made any reference to information other than the OMM for ISCA College and therefore the additional material referenced by him would not be considered by the Commissioner's investigation because it did not fall within an objective reading of the request. He also requested that the complainant explain his contention that the documents were held electronically.

16. The Commissioner also wrote to DCC on 24 August 2009, requesting clarification of the public authority's estimate of its costs for compliance with the complainant's request.
17. The complainant replied on 24 August 2009, acknowledging the scope of the Commissioner's investigation was confined to the original matters, but expressing considerable surprise that the Commissioner's staff was unaware that it is a requirement of the Freedom of Information Act 2000 that all public authorities adopt EDRM by 2005 and that, by its own admission therefore, DCC was not compliant with the Act. The complainant then subsequently provided further supporting evidence for his position.
18. During the course of the Commissioner's investigation, the public authority indicated that it was minded to refuse the complainant's request as vexatious under section 14(1) of the Act. It explained that, following a change of personnel in the public authority, it had formed the view that the request should have been refused on the grounds of section 14(1) at an earlier stage. It therefore altered its grounds of refusal to section 14(1).
19. The Commissioner observes that there is nothing in the legislation which prevents the late application of exemptions (or other provisions, such as section 14, which remove the obligation for compliance with section 1 of the Act). Where a public authority cites section 14 during the course of an investigation the Commissioner considers that he has discretion as to whether or not to accept it. The Commissioner considers that it is important to ensure that public resources are not applied to processing requests that are in fact vexatious. Having considered the evidence available in this case he determined that it was appropriate to consider the public authority's reliance on section 14(1) despite the fact that it was introduced at a late stage.

20. The Commissioner subsequently received the public authority's arguments and evidence in support of its refusal of the complainant's request as vexatious under section 14(1) of the Act. The complainant was informed of this change in the public authority's position and its arguments regarding the applicability of section 14(1) were summarised. The complainant was then invited to respond and subsequently provided his rebuttal of the public authority's position.
21. The Commissioner has carefully considered the submissions from each party regarding the applicability or otherwise of section 14(1). He has set out his analysis and conclusions in further detail below.

Findings of fact

22. The Freedom of Information Act 2000 does not place any statutory requirement on a public authority to adopt EDRM systems.
23. The Code of Practice on the Management of Records¹ introduced in conformity with section 46 of the Act (the Code) is not prescriptive about the medium within which public authorities should store their records, however paragraph 9.1 of the Code states:
- "Authorities should decide the format in which their records are to be stored. There is no requirement in this Code for records and information to be created and held electronically, but if the authority is operating electronically, for example using email for internal and external communications or creating documents through word processing software, it is good practice to hold the resulting records electronically."*
24. The Commissioner's guidance on records management² provides recommendations for the proper handling of both paper and electronic records in accordance with the Code.
25. The Commissioner has clarified the public authority's use of the 'Buzzsaw' software application. This is a data storage and project management application, understood to be hosted on a

¹ Available online at:
<http://www.foi.gov.uk/reference/impreg/codemanrec.htm>

² Available online at:
http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_8_-_records_management_faqs_v2.pdf

university server in the United States, which enables contractors to upload and amend documentation and plans relating to projects, and thereby permit their staff and clients to have access to up-to-date versions of the documents as necessary. Buzzsaw was introduced by the PFI contractors after the contract was signed. Access to documents was largely confined to the 'build' phase of the project and is granted at the contractors' discretion and under their control. DCC also understands that it may be charged for access in some circumstances.

26. Documentation created as part of the statutory health and safety file required for the construction phase of a project is produced for the use of the contractors and clients and is passed to the client at the completion of the construction project in accordance with regulation 17 of The Construction (Design and Management) Regulations 2007³ (CDM2007), which is reproduced in the Legal Annex to this Decision Notice. The obligation of the client is described by the regulations as:

(3) The client shall take reasonable steps to ensure that after the construction phase the information in the health and safety file—

(a) is kept available for inspection by any person who may need it to comply with the relevant statutory provisions; and

(b) is revised as often as may be appropriate to incorporate any relevant new information.

(4) It shall be sufficient compliance with paragraph (3)(a) by a client who disposes of his entire interest in the structure if he delivers the health and safety file to the person who acquires his interest in it and ensures that he is aware of the nature and purpose of the file.

27. The Operations and Maintenance Manual does not form part of the health and safety file produced for the purposes of CDM2007, but is associated with similar requirements to produce or compile comprehensive literature which will enable a building and its contents to be properly operated and maintained, consistent with good practice and health and safety stipulations. For this reason it is often associated, informally, with the health and safety file.

³ Available online at http://www.opsi.gov.uk/si/si2007/uksi_20070320_en_1

28. The Commissioner has taken advice from the Chartered Institute of Building, which confirms the comprehensive nature of an Operations and Maintenance Manual. It is considered likely that such a manual will need to encompass a level of detail which will include, for example, the type of batteries to be fitted in smoke detectors or the part numbers for tap washers. This is partly to ensure adequate maintenance can be undertaken, but also because the more comprehensive the file, the fewer liability risks there will be for contractors arising from any omissions to it.

Analysis

Substantive Procedural Matters

Section 1

An objective reading of the request.

29. The public authority has explained that a PFI project, such as the ISCA College project, generates copious documentation and any paper documentation created is very substantial. It further explains that, as it understands the term used by the complainant, an Operations Maintenance Manual (OMM) for a school, will cover a wide range of subjects including (but not limited to), for example:

- The maintenance of all furniture and equipment, including IT equipment, cookers, lathes, drama curtains, etc;
- Information on how floors are to be cleaned, how folding doors are serviced, how pumps, boilers, chillers, radiators, valves, windows and any other fittings are serviced and maintained.

30. The complainant, for his part, has advised the Commissioner that he is:

"[...] not interested in the hanging of drama curtains, tap washers, boilers etc as set out by the DCC but I am interested in other major facets of the ISCA College, i.e. lightning protection system, security fencing, electrical and grounding systems, fireproofing, plumbing systems etc."

31. The complainant uses the term 'Operations Maintenance Manual' which is understood by the public authority to be a substantial and comprehensive document. Having carefully considered the request and sought the advice of the Chartered Institute of Building, the Commissioner has satisfied himself that the public authority's interpretation of the request was an objective one.
32. For his part, the complainant argues that his request should be interpreted more narrowly, though the Commissioner has seen nothing in his correspondence to the public authority which would qualify the term in the way he suggests. The information specified by the complainant as being of interest to him would, in the Commissioner's view, fall within the public authority's objective interpretation of the request. However he does not consider that, read objectively, the request only covers that more limited category of information. Rather this appears to be an attempt by the complainant to further refine his request during the course of the Commissioner's investigation.
33. The public authority has suggested that it understood the complainant's meaning as it did as a result of previous correspondence, although it has been unable to provide copies of any such correspondence for the Commissioner's investigation. It did not however suggest that the previous correspondence meant that the request became ambiguous. During the Commissioner's investigation, the complainant has drawn the Commissioner's attention to various pieces of legislation, including the Construction Design and Management Regulations, which suggests that he is familiar with the term in the context of the design and construction of a building. The Commissioner notes that, even if the term is confined to those elements specified by the complainant, an OMM which related to the plumbing system would extend to a substantial level of detail, for example including the tap washers mentioned earlier. Similarly the 'fireproofing' (or fire-protection system) would include the smoke detectors also mentioned previously. The Commissioner observes that the OMM as applied to the electrical and grounding system is likely to be similarly comprehensive.
34. The Commissioner's view is that a public authority, if it is aware that an applicant may require information other than that which is requested, may claim under section 1(3) of the Act that it reasonably requires further information to identify the information requested. However if a public authority in this situation reads the request objectively and responds to the

request as phrased, without exercising its right to require further information under section 1(3), then no duties to provide advice and assistance under section 16 of the Act arise. It is not the case that a public authority must look for other possible readings of a seemingly clear request or check previous correspondence. This is supported by the Information Tribunal in the case of *Boddy* (EA/2007/0074) which states at paragraph 25:

"The Tribunal's conclusions on this aspect of the appeal are that the correct approach to the law is that a request for information ought to be "taken at face value", i.e. it should be read objectively. [...] Therefore, if the request is unclear or ambiguous, then the obligation on the public authority to provide advice and assistance comes into play and the request should be clarified with the applicant for information. However, we would qualify this by saying that if an applicant had been in discussions or correspondence with the public authority about a particular matter [...] then we would expect the public authority to take into account the contemporaneous dealings with the applicant to clarify the information that was being requested."

35. Therefore, if a request is clear but a public authority suspects, from its prior knowledge of the applicant, that they may require different or additional information to that specified in the request, then the public authority is permitted, but not required, to seek clarification of the request. The Commissioner would not expect the public authority to check for previous correspondence when an otherwise clear request is received. However, if when making a request the applicant draws the public authority's attention to the contemporaneous dealings and makes it clear that the request should be considered in this context, then if this renders the request ambiguous or unclear the duty to provide advice and assistance under section 16 of the Act will be triggered.
36. In this case, the public authority has not indicated that it considered the complainant's request to be ambiguous or unclear even when read in the context of earlier correspondence and its response reflects its understanding of an ostensibly clear request.

Section 14

37. Having reached a decision about the scope of the request, the Commissioner went on to consider the public authority's claim that it was not obliged to comply with it on the basis of section 14(1). When doing so he took into account the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:

- whether compliance would create a significant burden in terms of expense **and** distraction
- whether the request is designed to cause disruption or annoyance
- whether the request has the effect of harassing the public authority or its staff
- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
- whether the request has any serious purpose or value

Will compliance create a significant burden in terms of expense and distraction?

38. The public authority initially refused the complainant's request on the grounds of the cost of compliance with the request, under section 12 of the Act. Its subsequent reliance on the provisions of section 14(1) of the Act similarly suggests that compliance would constitute a burden, in terms of both cost **and** distraction and therefore elements of the public authority's arguments on the cost for compliance remain relevant.

39. For the reasons explained previously, the Commissioner accepts that the public authority's objective reading of the request would lead it to conclude that the OMM will comprise a substantial amount of information. In fact it is evident that even if the Commissioner had accepted the complainant's narrower interpretation of the request compiling the information would involve locating and retrieving an extensive and comprehensive collection of documents derived from a variety of sources.

40. As clarified earlier, the Buzzsaw application is not owned by DCC but may be used by them as a client to obtain access, where contractually permitted, to a copious online repository of documentation relating to the PFI schools project.

41. The Commissioner therefore considers that, given the wide-ranging scope of the information caught by the complainant's request, and the likelihood that this is not contained within one document, or even one file, but rather will be spread across a wide range of documents and sources, the public authority's assertion that complying with the request will constitute a burden in terms of cost and distraction is reasonable.
42. The complainant, for his part, maintains that the information he has requested "... *can and should be completed in a matter of minutes [...] because the data which I have requested is in PDF electronic format*". The Commissioner however observes that the complainant is mistaken in his belief that the Act confers an obligation on public authorities to adopt EDRM and, further, that he offers no grounds for his assertion that the documentation he requires is held, by the public authority, in the format he describes. Furthermore, given the scope of the request, the Commissioner recognises that even compiling information held electronically is likely to have constituted a considerable burden particularly when viewed in the wider context of this case.

Is the request is designed to cause disruption or annoyance?

43. The public authority has not suggested that the complainant's request is designed to cause disruption or annoyance and the Commissioner has not considered this aspect further.

Does the request have the effect of harassing the public authority or its staff?

44. The public authority has explained that the complainant's history of contact with it began in 2005 and his emails became so numerous, and contained accusations about its staff which it describes as "*so wild and defamatory*" that its Chief Executive took the unprecedented step of putting a bar on further incoming emails from him. It has provided a list of dates of correspondence from the complainant which includes 18 in 2005, 3 in 2006, 1 in 2007, 10 in 2008 and 8 in 2009 (to the end of May). The public authority advises that this list is not considered to be comprehensive and there are likely to be others which it could not locate, due to the number of people the complainant has written to over the years.
45. The public authority argues that the complainant's approach in his dealings with it and the requests he has made, constitutes

an unreasonable level of harassment. He has mingled requests with accusations and complaints, which singled-out individual officers, thereby causing distress to its staff.

46. The public authority has also provided quotations from elements of that correspondence, containing examples of what it describes as "abusive comments" made by the complainant to (or about) its staff, including:

"... you have failed your duty of care to Devon Taxpayers...I do not accept that you are being completely honest with me ...you have personally supplied information to the Freedom of Information Office which you knew or should have known to be incorrect" (14 May 2009)

"...your actions and inactions have brought the Devon County Council into disrepute by supplying false and misleading information to the FOI Commissioner Office" (letter dated 26 May 2009).

"...I fervently believe that the Devon County Council and you in particular are concocting false information about ISCA and other PFI school data to cover up serious crimes" (letter dated 7 July 2008).

"...the Fire Protection and Fire Certificate has been fraudulently approved" (letter to ISCA college dated 11 Mar 2007).

"Further to my recent request to investigate the Devon County Council Officials for fraud and theft of public funds and malfeasance, I now wish to add culpable negligence and conspiracy to cover-up serious crimes" (letter to the Serious Fraud Office dated 27 Feb 2006).

"...DCC Legal Advisor and your goodself are conniving and colluding to pervert the Course of Justice for personal and political gain" (letter dated 6 April 2005).

"...DCC are disseminating false and misleading information...The DCC CE has abused his power of office SOLELY to cover up his own gross incompetence, neglect and fiduciary failure" (letter dated 11 Mar 2005).

47. The Commissioner has drawn the complainant's attention to these references and he has not disputed them. He agrees that he has accused the public authority of 'wrongdoings' and he

stands by his allegations. The Commissioner also observes that the complainant's correspondence to him, received during the course of his investigation, contains comments and accusations of a similar nature about the public authority and, occasionally, about the conduct of the Commissioner's own staff.

48. The complainant is unapologetic about his correspondence. It is clear to the Commissioner that the complainant's views are genuine and firmly held and, to some degree, this explains the tenor of his correspondence which betrays a level of frustration and annoyance with the public authority.

49. The complainant, nevertheless, does not accept the public authority's view that his correspondence has been aggressive or harassing. The Commissioner concedes that the complainant may be genuine in his belief that his correspondence does not possess these characteristics however, while this may not necessarily have been an intended effect, it is nevertheless apparent to him that any reasonable person receiving correspondence similar to the examples above would be likely to be harassed or distressed by it. For the same reason, given that some of the correspondence was sent to other organisations, but written about the public authority, the effect of that correspondence would be likely to harass the public authority.

50. The Commissioner considers the comments of the Information Tribunal in the case of *Gowers and the Information Commissioner and the London Borough of Camden* (EA/2007/0014)⁴ to be relevant, in particular paragraph 53:

"What we do find, however, is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient, as hostile, provocative and often personal"

Similarly, at paragraph 55:

"[...] the frequency and persistence of the requests [...] and by the fact that the requests were often interspersed with further allegations of incompetence and bias. We find that taken in their context, the requests are likely to have been very upsetting to the [...] staff and that they [...] are likely to have felt deliberately targeted and victimised"

⁴ Available online at http://www.informationtribunal.gov.uk/Documents/decisions/Determination_Gowers_Final_website_updated.pdf

Can the request otherwise fairly be characterised as obsessive or manifestly unreasonable?

51. The Commissioner notes that the complainant submitted his complaint 10 working days after sending his request to the public authority. The complainant is familiar with both the FOI process and the role of the Commissioner, having previously submitted a complaint about the same public authority, and the Commissioner observes that his action might be considered somewhat precipitate. The case file contains examples of correspondence from DCC to the complainant which produces prompt replies from the complainant, commonly revisiting matters covered in previous communications or still under consideration. This apparent impatience and unwillingness to let matters take their course might be seen to suggest a degree of unreasonable preoccupation with the complainant's concerns.

52. The public authority has also drawn the Commissioner's attention to behaviour by the complainant, specifically his repeatedly entering the PFI Schools' premises (which it presumes to have been in search of evidence to support his position) and which actions led to it banning him from those premises. The public authority argues that, in conjunction with the large amount of correspondence and contact on the same general topics, this is indicative of obsessive behaviour. This was put to the complainant, who responded:

"I do not consider my visits to PUBLIC PLACES as either obsessive or unreasonable. I have visited these 6 PFI schools after schools hours in line with LAWFULL PUBLIC VISTS by members of the general public. However, I have not revisited the schools since the DCC placed a ban against me from visiting these premises. I would say that these bans by the DCC are breach of my Human Rights to visit public buildings [...]" [sic]

53. The Commissioner notes correspondence from the complainant to DCC on 22 April 2009 which informs the public authority that 5 of the 6 PFI schools are failing to display a public liability insurance certificate in a prominent place. As these documents will be displayed within the school premises, it is apparent that the complainant's visits have not been confined to the school grounds. Failure to display a current public liability insurance certificate (if proven) may contravene current legislation, however it does not appear to the Commissioner to constitute

sufficient grounds for the complainant's behaviour. While the Commissioner accepts that this is only part of the complainant's concern, the fact that he has gone to such lengths to make allegations about what amounts to an administrative oversight supports the public authority's argument that the complainant's concerns are obsessive or manifestly unreasonable.

54. The Commissioner makes no judgement about the lawfulness, or otherwise, of the complainant's visits to school premises, whether they were inside or outside school hours. It is clear to him, however, that the complainant has gone to considerable lengths, beyond what many people might undertake, in his pursuit of his concerns. Taken in conjunction with the volume of the complainant's correspondence, the frequency of his requests for information (which includes 6 on the subject of the health and safety and OMM files for PFI schools, between January 2008 and May 2009) and their focus on a small range of topics, the Commissioner agrees that this may fairly be characterised, in the context, as obsessive.

Does the request have any serious purpose or value?

55. It is clear to the Commissioner that the complainant believes his request has a serious purpose, namely to expose flaws in various PFI-funded public buildings and consequent risks to public safety. The Commissioner accepts that, if the complainant's grounds for concern were well-founded, it is likely that this would be sufficient to justify his persistence and the public authority's refusal of the request as vexatious would not be upheld.
56. The public authority, for its part, is satisfied that the complainant's allegations are unfounded. The OMM relates to the upkeep of buildings which have all been built in accordance with the normal regulatory and statutory processes and inspections, including sign-off by a Building Control Officer, and an independent inspection by a person appointed by the PFI fundees. The complainant has, in addition, reported his concerns to the Health and Safety Executive (HSE) which has a remit to carry out an investigation if necessary, but which has taken no action.
57. The complainant maintains that his allegations can be verified by "*a simple ocular inspection*" and will also be verified in the OMM. He acknowledges that he has reported what he describes as "*serious health and safety issues on the 6 PFI schools*" to

the HSE, which *"has failed to take my allegations seriously"* and, moreover, the HSE has also placed a ban on further email contact from him.

58. The complainant has also filed complaints with the Local Government Ombudsman, which, in the complainant's view has also *"failed to take my allegation seriously"*.
59. The Commissioner is guided by the Information Tribunal in the case of *Coggins and the Information Commissioner* (EA2007/0130)⁵ which stated at paragraph 20:

"the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious [...] The case before us might have been such a case had it not been for the existence of the independent investigations."

The Tribunal continued, at paragraph 25:

"There came a point however when the Appellant should have let the matter drop. Even if he believed that the Council had not properly complied with his earlier FOIA requests, there had been three independent enquiries into the circumstances giving rise to the request. [...] Despite all this, the Appellant refused to believe the veracity of the independent investigations."

60. The Commissioner observes that the complainant's allegations have been submitted both to the public authority, and to an organisation empowered to investigate such matters and neither appears to concur with his position. Further allegations have been submitted to the Local Government Ombudsman which has also not found in his favour. This appears to the Commissioner to place the current case in a situation analogous to that considered by the Tribunal in *Coggins*, namely that the complainant's concerns have not only been dismissed by the public authority as groundless, but have also been assessed by two other independent bodies, which have not made any findings in his favour. As the Tribunal suggests, there comes a point where the Appellant should have let the matter drop.

⁵ Available online at http://www.informationtribunal.gov.uk/Documents/decisions/RHCogginsvICOEA_2007_0130_Finaldecisionwebsite.pdf

61. Taken as a whole, the complainant has had an opportunity to refute the public authority's arguments and has stated his disagreement with its position. He has not, however, provided any arguments or evidence of his own in support of his views, beyond stating his belief that he has uncovered serious flaws in relation to the various PFI projects but that these have not been taken seriously. He makes serious allegations of impropriety, including collusion, fraud, corruption and attempts to pervert the course of justice on the part of the public authority and its staff. These have been done, he alleges, to further the public authority's own aims. He nevertheless produces no evidence which would allow the Commissioner to give any weight to his arguments.
62. Having considered all of the arguments of both parties carefully, the Commissioner is persuaded that the public authority was correct to refuse to comply with the request on the basis that it was vexatious. All the elements above support the public authority's position in this regard. The complainant, for his part, maintains that the public authority is arguing that he is vexatious, not his request. The distinction is often a difficult one to grasp. While the Act is often described as 'applicant- and motive-blind' it is necessary, in the case of section 14 of the Act, to consider any antecedents and their context in relation to the request at issue. The Commissioner is satisfied that in this case, the context and history of the complainant's dealings with the public authority are sufficiently similar to the current request that they ought to be taken into consideration and the current request is therefore a continuation of an existing area of dispute between the complainant and the public authority. Were the current request to be on a matter entirely unrelated to the complainant's previous dealings with DCC, that would suggest it was the complainant, not the request which was being considered vexatious. That is not the case here.
63. If a request nonetheless has a serious purpose or value, this may, in itself, be sufficient to outweigh the combined weight of arguments put forward by the public authority, so that the request ought not to be considered vexatious. The Information Tribunal in the case of *Coggins*, above, articulates that view clearly in paragraph 20 of its judgement. In this case, the complainant has expressed his serious concerns, which amount to a risk to public safety. Clearly, if these were to have any substance, they would be likely to permit the Commissioner to give them sufficient weight to uphold his complaint. The

Commissioner has invited the complainant to outline his grounds for those concerns and he has not done so, beyond a bald statement that the issues can be verified by a simple visual inspection.

64. The Commissioner therefore gives these grounds only a small amount of weight, particularly as the complainant has already confirmed that his concerns have also been brought to the attention of both the HSE and the LGO, which have not acted upon them. The Commissioner does not believe that these organisations would fail to act upon allegations of such a serious nature if necessary, therefore he finds that the complainant has had ample opportunity to have his concerns heard and neither DCC, the HSE or the LGO appears to have found merit in his views. For this reason, the Commissioner finds that the complainant's serious purpose for his request is not sufficient in this case to outweigh the combined arguments put forward by the public authority for considering his request vexatious. He therefore upholds the public authority's use of the provisions of section 14(1) of the Act.

Section 17(5)

65. The complainant's request for information was made on 10 February 2009 and the public authority did not provide a refusal notice until 12 May 2009, a period of 63 working days. That refusal notice stated a different section of the Act to that which the public authority subsequently relied on. By its failure to provide a response to the request within 20 working days, and its failure to state in the notice the section of the Act on which it relied, the public authority breached section 17(5) of the Act.

The Decision

66. 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:

- The refusal of the request under section 14(1) of the Act.

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

- The public authority breached section 17(5) in failing to provide a response to the request within 20 working days, and to state in the notice the section of the Act on which it relied.

Steps Required

68. The Commissioner requires no steps to be taken.

Right of Appeal

69. Either party has the right to appeal against this Decision Notice to the First-Tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

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 25th day of August 2010

Signed

**Jo Pedder
Group Manager FOI Policy Delivery**

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

Legal Annex

S.1 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.'

Section 1(2) provides that -

'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'

S.10 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.'

S. 14 Vexatious or Repeated Requests

Section 14(1) provides that -

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

Section 14(2) provides that -

'Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or

substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.'

S.17 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.'

The Construction (Design and Management) Regulations 2007

The client's duty in relation to the health and safety file

17. (1) *The client shall ensure that the CDM co-ordinator is provided with all the health and safety information in the client's possession (or which is reasonably obtainable) relating to the project which is likely to be needed for inclusion in the health and safety file, including information specified in regulation 4(9)(c) of the Control of Asbestos Regulations 2006..*

(2) *Where a single health and safety file relates to more than one project, site or structure, or where it includes other related information, the client shall ensure that the information relating to each site or structure can be easily identified.*

(3) The client shall take reasonable steps to ensure that after the construction phase the information in the health and safety file—

(a) is kept available for inspection by any person who may need it to comply with the relevant statutory provisions; and

(b) is revised as often as may be appropriate to incorporate any relevant new information.

(4) It shall be sufficient compliance with paragraph (3)(a) by a client who disposes of his entire interest in the structure if he delivers the health and safety file to the person who acquires his interest in it and ensures that he is aware of the nature and purpose of the file.