

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 September 2010

Public Authority: University of Warwick
Address: University House
The University of Warwick
Coventry
England
CV4 8UW

Summary

The complainant made six requests for information which concerned further requests for clarification on information that he had received previously that all concerned the administration of the University's medical school courses in general and the undergraduate MB ChB medical degree in particular. The public authority responded that it believed section 12(1) [the costs limit] applied. It confirmed its view in its internal review. The Commissioner has considered the case in detail and has concluded that section 12(1) was correctly applied in this case. He has also considered whether the public authority offered reasonable advice and assistance when it considered the request in accord with section 16(1) and has concluded that it did not. However, he has determined that no further advice and assistance is required in light of this Notice. He has also noted that there have been procedural breaches of sections 10(1) and 17(5) of the Act in this case, but he requires no remedial steps 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 believes that he was treated inequitably by the public authority. The information that has been requested about its administration is to obtain further evidence about this matter.
3. The complainant made four previous requests to the public authority. These have not been considered in this investigation, but explain the reason why the requests that are being considered ask for specific information.

The Requests

4. The public authority received six requests from the complainant in accordance with section 1(1) of the Act. The requests are voluminous and the Commissioner has decided to place them in Appendix A of this Notice to ensure clarity. Three requests were dated 18 August 2009, two were dated 25 August 2009 and the final one was dated 25 September 2009.
5. On 14 October 2009 the complainant informed the public authority that the statutory timescales had been exceeded.
6. On 16 October 2009 the public authority issued a single refusal notice for the six requests. It explained that in its view the requests taken together would exceed the costs limit. It said that section 12 excluded the public authority from complying with a request where the cost of doing so would exceed £450 calculated at £25 an hour for only specified activities. It explained that it was able to aggregate requests made over a sixty day period. It explained that a large corpus of information had been requested and that the University had devoted considerable resources to answer his previous requests. It explained that in its view the first request would exceed the costs limit by itself, as it required the obtaining of precise details which would be very labour intensive to find. It explained that it viewed the appropriate limit as being significantly exceeded and provided details of how to request an internal review.
7. On 19 October 2009 the complainant expressed his dissatisfaction at the public authority's handling of the request and asked for it to provide the information that he had requested. This constitutes a request for an internal review. The exact wording can be found in Appendix B (the Commissioner has reformatted it slightly to accord with his style guide).

8. On 27 October 2009 the public authority issued its internal review response. It apologised for the delays in responding originally. It explained that it was due to staff sickness, the summer period and because the outcome required the requests to be assessed in detail before understanding how much work may be involved. It confirmed that it upheld its original position and relied on section 12(1). It explained that the University did not hold the information in the format that was requested and therefore had to extract the data on his behalf. It explained that the original four requests took between 60 and 70 hours. It stated that the costs threshold was designed to protect public authorities from incurring disproportionate costs and explained that its verdict was a prudent one. It stated that the refusal was based only on a realistic estimate of the significant costs that would be involved. It explained that it did acknowledge the requests but that it was keeping under review the costs of providing the information. In respect to the point about clarified requests not being new requests, it explained that in its view these were new requests (although on a similar subject matter to previous requests).
9. On 13 November 2009 the complainant complained to the public authority again about its conduct in handling the request that it received. This was acknowledged on the same day.

The Investigation

Scope of the case

10. On 3 November 2009 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - Some of the information represents merely clarification of previous information and should not be regarded as a separate request.
 - The information is important as may be required as evidence for his complaint to the Office of the Independent Adjudicator for Higher Education (OIAHE) about various matters.
 - The public authority only relied on section 12(1) when, in his view, the information would have supported his position in the above complaint.

- The reasons given for non-disclosure amount to excuses and are spurious, are factually inaccurate, inadequate, and constitute a violation of both the FoI Act and the Human Rights Act (1995) (Article 6 Rights).
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The Commissioner can only consider the application of the Freedom of Information Act in this case. He can make no comments about the conduct of the public authority in any other matter.

Chronology

12. On 17 November 2009 the Commissioner wrote to the public authority to explain that he had received this complaint and asked for the public authority to provide further arguments about its position.
13. On 23 November 2009 the public authority replied to the Commissioner.
14. On 14 December 2009 the Commissioner emailed the complainant. He explained that the case had now been allocated and explained the scope of his investigation.
15. Also on 14 December 2009 the Commissioner contacted the public authority to present a number of questions about the complaint.
16. On 21 January 2010 he received a response to those enquiries. He acknowledged receiving the response on the same day.

Analysis

Substantive Procedural Matters

Are the requests valid under the Act?

17. The complainant has argued that the requests did not constitute new requests under the Act as they constituted merely requests for clarification about previous responses that he had received. In short, the Commissioner disagrees with this position and takes the view that requests about requests should be treated as new requests by the authority involved.

Exemptions

Section 12(1)

18. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
19. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that the cost limit for non central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
20. The Information Tribunal (the 'Tribunal') in *Quinn v Information Commissioner & Home Office* [EA/2006/0010] explained this point in this way (at paragraph 50):

'The fact that the rules drafted pursuant to s.12 have the effect of defining what is a reasonable search and the amount of time and money that a public authority are [sic] expected to expend in order to fulfil their obligations under the Act, serves as a guillotine which prevents the burden on the public authority from becoming too onerous under the Act.'

21. The Commissioner has split his analysis of section 12(1) into two parts. The first part was to consider whether the requests should be aggregated or considered individually for the purposes of section 12(1). The second part will be to discuss the estimate provided in this case and whether it was reasonable and related to the activities that are allowed to be included.

Should the requests be aggregated or considered individually for the purposes of section 12(1)?

22. When considering whether requests can be aggregated or need to be considered individually the Commissioner is guided by Regulation 5 of the Statutory Instrument 2004 No. 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" which states that:

'5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1)

of the 2000 Act would, apart from the appropriate limit, to any extent apply, 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 total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
- (b) those requests are received by the public authority within any period of sixty consecutive working days.'*

23. In order to aggregate the requests for the purposes of section 12(1) the Commissioner must determine whether they relate to any extent, to the same or similar information. This has been considered by the Information Tribunal in *Ian Fitzsimmons v Department for Culture, Media and Sport* [EA/2007/0124]. The Tribunal made the following general observation at paragraph 43:

"The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate to any extent to the same or similar information [Tribunal emphasis]".

24. The Commissioner invited the public authority to make its submissions concerning this point. It replied that it believed that all the requests were all similar since they all focus on the provision of medical courses, particularly the medical degree course, by Warwick Medical School (WMS). It also explained why this was the case in detail.
25. It explained that it could come to this conclusion by considering the information that would be embraced by each request. For example, request one relates to course examination procedures and course content and quality. This makes it about the provision of medical courses. Request two concerns applicants for posts of group learning and prize winners on a medical course. This means it is also concerned with medical course. The Commissioner is satisfied that looking at the

six requests that they are all similar to some extent as they all relate to the provision of medical courses.

26. As well as the six requests being similar it is also necessary for them to be submitted within sixty working days. The first and last of the six requests were separated by less than sixty working days in this case.
27. The Commissioner has therefore determined that the public authority is able to aggregate the costs for all six requests in this case.
28. The public authority has also explained to the Commissioner that it is not taking into account four earlier requests which in its view were also for similar information and may have been within a reasonable timeframe. It explained that it had answered these requests and this took more than 18 hours. The Commissioner has not taken the handling of the previous requests into account in his analysis either. He is therefore focussing on the aggregate costs for only the six requests that have been specified in the requests section above.

Was the estimate reasonable in this case and was section 12(1) therefore applied correctly?

29. The issue of what constitutes a reasonable estimate was considered in the Tribunal case *Alasdair Roberts v the Information Commissioner* [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:
 - *"Only an estimate is required"* (i.e. not a precise calculation);
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3);
 - Time spent considering exemptions or redactions cannot be taken into account;
 - Estimates cannot take into account the costs relating to data validation or communication;
 - The determination of a reasonable estimate can only be considered on a case-by-case basis; and
 - Any estimate should be *"sensible, realistic and supported by cogent evidence."*
30. The activities referred to in Regulation 4(3) are:
 - (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."

31. The public authority has provided the Commissioner with a detailed and reasoned estimate about why it believed that the processing of these six requests would exceed the costs limit.
32. The first thing that the Commissioner asked was for the public authority to provide a structured explanation on why it believed that responding to the six requests would take over eighteen hours in this case.
33. It explained that it had come to this conclusion by the quantity of questions in this instance. In request one there were 49 questions and request four had 20.
34. It explained that the requests relate to very specific and minute details contained within extensive records. It said that while many of these records are held electronically, in many instances it was only possible to extract the relevant data through close interrogation of the records, rather than through a computer-generated search function. It explained that this process would be time consuming due to the degree of specificity of many of the questions and it would be necessary for records to be cross checked to ensure the accuracy of the information.
35. While the Commissioner is not normally concerned with the accuracy of recorded information and would ask for all information held to be provided. In this case it is clear that the answers to a number of the questions while being derivable from the recorded information would not be held in the requested format. He is therefore satisfied that it would be reasonable to cross check the records while extracting the requested information in the circumstances of this case and this time can be included.
36. It provided the following examples to enable the Commissioner to understand what it meant:
 1. For the following part of request 1:
(i) Please detail (with reference to terms of reference) how GLFs (a) facilitated the group learning, (b) facilitated the transfer of knowledge between students, (c) guided group decision making?

It explained that this would be a detailed and comprehensive task to extract the relevant information from teaching resources from the MB ChB for first years. It stated that each module leader operates in a different way depending on the complexity of the module and any records held by all of the individuals

would have to be closely read in order to locate the relevant information. It also explained that it would also have to search for records for all lessons outside the classroom too and this would increase the time to locate relevant retained records.

2. For the following part of request 1:

Please detail what provisions were made for students with SpLD (dyslexia and/or dyspraxia) (a) prior to commencement of the 2008-09 induction programme, and/or (b) prior to commencement of the 2008-09 lecture series, and/or (c) prior to the commencement of 2008-09 'Small Group Work'?

It explained that this request would require it to consider every individual learning plan for the 25 individuals with specified learning difficulties. It would then be required to collate that information and classify it depending on time period.

3. For request 4: part entitled *Further clarification required regarding the information provided*

It explained that this question contains six sets of sub-questions, each of which contains between 2 and 6 very specific questions and the information is not readily available electronically. It stated that as an example, sub-question 5 seeks very specific information relating to 1 student with special learning difficulties (SpLD) and the numbers of students given additional time in specified examinations (2009 re-sits). The process of locating and extracting the relevant information would involve looking at admissions data at entry; those students who applied for special circumstances by the end of induction week; then looking for students who applied after the first set of examinations; looking for students who applied after the second set of examinations and finally looking at those at the re-sit. Tracing one particular student may also mean going through all stages if they did not declare their disability at admission. The Assistant Registrar would need to look at a master database used to allocate seating in the Medical Teaching Centre, as well as going back to the UCAS form and then searching the individual letters sent to students by the central examinations team to look for dates. It explained that this task took time.

37. The Commissioner accepts that the information cannot be readily generated without considerable input. He is satisfied that there are no reasonable alternatives in this case other than the individuals at the University checking a considerable quantity of records in line with the request.

38. The Commissioner has received assurances that the only activities that have been included in the estimate to him are those allowed by Regulation 4(3) (these activities are stated in paragraph 30 above).
39. The Commissioner has asked the public authority to explain the departments that would need to be checked and for it to provide an approximation of the volume of records that would need to be checked to provide a response to the six requests. The public authority explained to the Commissioner that to obtain the information requested, it would need to check at least the following:
- Examination records (approximately 180) held of a shared drive.
 - Individual student records - student files (hard copy only).
 - Individual learning plans for students with the specified disabilities – student files (hard copy only).
 - Complaints and appeals records – file store (hard and soft copies).
 - Minutes of appeals and two other committee meetings.
 - Examination invigilators' records – hard copy kept with examination board minutes.
 - Practical examinations assessors' notes - twelve for every candidate.
 - Examiners' notes – markers mark outside of envelope with comments – destroyed after assessment group meetings and examination board held.
 - Employment records for Group Learning Facilitators x10 once identified.
 - Job descriptions for Group Learning Facilitators – central HR.
 - Curricula vitae for Group Learning Facilitators – central HR.
 - Continuing professional development records – SITS (Student Records System).
 - Job application records for Group Learning Facilitators – central HR.
 - Board of Examiners' minutes x5.
 - MB ChB Assessment Group minutes x5 minimum.
 - MB ChB Programme Handbook.
 - GMC audit reports.
 - Correspondence between WMS and students, the Trust and GMC.
 - Information on the intranet.
40. The public authority also explained that approximately half of the information is held solely by various divisions within WMS, although it is not accessible in the format required by the complainant and it would be necessary to extract data from various sources and systems. In addition, WMS Human Resources department would have to access the University's central HR system to get employment information and

information relating to students with dyslexia and dyspraxia held by the University's Disability Services. In order to comply with the six requests it would be necessary to do a manual trawl of information as well as electronic searches for statistical data. This would involve extensive liaison between departments to match up students taking the examinations with the date when they sat the examination. Examination-and student-related information held by WMS in manual and electronic formats is extensive. For example, in the year 2007/8 to which many of the complainant's requests relate, there were approximately 720 students enrolled on WMS courses and 196 in the first year. Students take approximately four written exams per year. They also take a total of two practical examinations (OSCEs), one has six stations and the second has 12 stations that are all individually marked by separate examiners.

41. The public authority provided the Commissioner with calculated estimates for each of the six requests. These estimates represent the public authority's view of the minimum time that would be required to do only the activities allowed by section 4(3) of the Fees Regulations and are below:

'Request one (49 questions in total):

Information required would need to be located in and extracted from the following sources:

- *HR – job specifications, employment records, interview notes - **3 hours.***
- *Phase I Administrative Officer – attendance records for ad hoc facilitators - **30 minutes.***
- *Continuing Professional Development records – Course Secretary will need to be contacted to obtain attendance information and awards given - **30 minutes.***
- *Deputy Senior Tutor will need to go back through records of training and attendance. This person has now retired (31st December 2009) - **2 hours.***
- *MB ChB Examinations Officer will need to go back to examination board minutes, spreadsheet and appeal paperwork dating back to September 2007 - **4 hours.***
- *Collation and checking of information by Assistant Registrar once all information found and sent – **3 hours.***

Total estimated time for request one: 13 hours

Request two (4 questions in total):

Information required would need to be located in and extracted from the following sources:

- *HR – interrogate HR system for applications, March 2007 and June 2007 – **30 minutes.***
- *CPD course coordinator - interrogate university database for recipients of PGA Medical Education – **15 minutes.***

Total estimated time for request two: 45 minutes

Request three (1 question)

Information required would need to be located in and extracted from the following source:

- *Check intranet and hard copy versions of personal tutor handbook. This handbook is devised in sections so that they can be independently updated. Information received by tutors will therefore have changed throughout the year and all versions would have to be sent with dates as to when amendments were made – **2 hours.***

Total estimated time for request three: 2 hours

Request four (20 questions in total):

Information required would need to be located in and extracted from the following sources:

- *Examination board minutes and spreadsheets will need to be checked alongside database for special circumstances candidates – **2 hours***
- *A full explanation of how standards, thresholds and grades are achieved and recorded would need to be written. This would need to reference the code of practice and the examination board minutes for each set of examinations referred to – **2 hours***

Total estimated time for request four: 4 hours

Request five

Information required would need to be located in and extracted from the following sources :

- *Examination board records and spreadsheets will need to be checked alongside appeal paperwork to locate and extract the*

relevant information. These will then need to be double checked against the University central database where progressions are recorded – 1 hour

Total estimated time for request five: 1 hour

Request six

One question to answer as the rest of the document is a series of statements which the complaint wishes to draw to the University's attention.

- *Information required would need to be located in and extracted from documents submitted to the GMC when they visited the Medical School in the academic year 2005/2006 – 1 hour.*

Total estimated time for request six: 1 hour'

42. It explained that its estimate for the total minimum time was as follows.

13 hours (for 1.) + 45 minutes (for 2.) + 2 hours (for 3.) + 4 hours (for 4.) + 1 hour (for 5.) = 1 hour (for 6.) = **21 hours 45 minutes.**

43. It explained that this minimum estimate was in excess of the 18 hour limit and this was why it believed that it had applied section 12(1) correctly in this case.

44. In addition to its estimate, it explained the work that it had undertaken that evidenced that its minimum estimate was reasonably arrived at on the facts of this case. It explained that while it did not keep a full log of the work it had already completed when considering whether to respond to this request. It stated that considerable work had been undertaken and explained that it would include that which it could evidence within its estimate. It explained that there were 11.5 hours logged by the member of staff that dealt with the request alongside approximately six further hours that were done on two evenings outside normal working hours. This time did not include the time taken by other staff to respond to that member of staff.

45. It explained that the approximate time of 17.5 hours of time had been used in the following way:

1. A central contact was instructed to enable the public authority to consider which particular activities would be required across the University in this case. This contact familiarised herself with the requirements of the request and to determine whether and, if

so, which department would hold the information. The central contact would then partition the requests that require the same document and/or person to contribute to the response.

2. From this information, it was then necessary to establish whether or not the documents existed from the third parties and if so whether access could be granted. In some cases it was necessary to approach the 'gatekeepers' who kept confidential information such as Human Resources information and to contact third parties to obtain further information. It explained that each request took around two hours, due to their overlapping nature.
 3. It explained that when retrieving information it was necessary to hold confidential meetings to obtain the records required to generate the global information. It was also required to connect exam scripts (which had numbers on them) to particular students and this involved another database. It had to check each set of Assessment Group Minutes for 18 months too and individual staff had to be contacted to ascertain what teaching methods they had undertaken. Financial records would have to be accessed by appropriate staff to corroborate all attendance. GMC documents also required considering. Education records had to be taken from its database and individual records accessed. It also had to look at individual student files. It explained that it also had generated 217 emails which contained relevant information to formulate a response to the requests in issue. It also had 500 emails that may contain relevant information in respect to one or more of the requests.
46. The Commissioner believes that the 17.5 hours that were logged to undertake these activities was reasonably incurred doing only the specified activities allowed by Regulation 4(3). He therefore believes that this supports the public authority's position that its estimate that the work required to process this request would exceed 18 hours. This time failed to enable all the information to be generated and provided, as further work still was required.
47. The Commissioner does not consider that the public authority can include the three hours for 'Collation and checking of information by Assistant Registrar once all information found and sent'. He believes this time is equivalent to validation and was disallowed by *Alasdair Roberts* (mentioned in paragraph 29 above). However he is satisfied that the remaining **18 hours and 45 minutes** would be a conservative estimate of the work required in this case to do the activities that are allowed.

48. He is satisfied that this estimate is '*sensible, realistic and supported by cogent evidence.*' Indeed the public authority has undertaken a large amount of work in this case and has evidenced that the six requests together would take work in excess of eighteen hours. He notes that the public authority did not consider the hours spent by other staff assisting the main request handler in its estimate and this time could have been chargeable. He also notes that the public authority had already gone beyond the costs limit in respect of its original response to the complainant's first four requests. He relies on the Tribunal's decision in *Quinn* (mentioned in paragraph 20) to accept this estimate in this case. He therefore determines that section 12(1) was applied correctly in this instance.

Procedural Requirements

Section 16(1)

49. Section 16(1) (full text in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
50. The Commissioner is satisfied that the requests are clear and further clarification was not needed for them. Therefore paragraphs 8 to 11 of the Code did not require additional assistance to be provided in this case.
51. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code. In this case the Commissioner has considered whether it would have been reasonable for the public authority to have advised the complainant to reduce the scope of his request.
52. The public authority has explained that in its view it was unable to offer further advice and assistance in this case. It explained that the sequence of events meant that it was unable to know that further requests would be supplied, which would bring the costs limit into play. It explained that there was general advice and guidance on its website, which explains how to make a request and that it is clear from the structure of the requests this advice was followed.

53. In addition it explained that the context of this request must be taken into account. It concerns a long-standing matter and it believed that any request from the University to allow the complainant to narrow down his requests would have been met by an adversarial and hostile approach. It acknowledged that this hostility was partly of its own making through its failure to issue a letter confirming that the internal appeal procedures had been exhausted until 14 August 2009¹. It explained that any response that does not accord exactly with what the complainant wants precipitates further emails that would not assist the public authority. Evidence for these arguments can be found in the internal review request dated 19 October 2009 and the further complaint made on 13 November 2009.
54. The University explained that it believed that the complainant would not have been amenable to the provision of advice and assistance as it would have been misinterpreted as an attempt to avoid providing relevant information. It said that given its history any attempts to provide advice and assistance would be futile and would lead to the complainant making intemperate correspondence to various members of the University staff. In addition, it noted that the complainant has addressed requests to a variety of members of its staff despite being asked to use a single contact point. It also has been required in some cases to duplicate its efforts as the same requests have been sent to different areas.
55. The Commissioner believes that the arguments are finely balanced in this case when it comes to deciding whether advice and assistance would be reasonable. He notes that the requests together only exceed the cost limit slightly. He also notes that the complainant has the chance to make a new request for information founded on the understanding of the details of this notice.
56. The Commissioner has considered the facts carefully and has decided that the public authority was wrong not to offer further advice and assistance in this case. Whilst mindful of the arguments presented, it appears to be self evident that it would have been a straightforward process to have enquired if the complainant would have been in a position to choose from five of the six requests made.
57. The calculations presented above show that any combination of five (or fewer) of the six requests would have brought the costs below the threshold prescribed by section 12. Whilst subsequent events and exchanges demonstrated that the complainant was unwilling to refine

¹ The internal appeal procedures relate to the complaint that the complainant has made about how the University conducted itself in an academic decision that he disagreed with. The letter that was issued on 14 August 2009 explained that the next step would be for him to make a complaint to the Office of the Independent Adjudicator for Higher Education.

the scope and accept anything less than the entirety of what was asked for, it does appear to the Commissioner that the choice should have been offered at the time of the refusal. As such, whilst the breach of section 16(1) is identified, no remedial steps are required as the communications after the refusal provided more than enough detail to the complainant to have refined the request if he were so minded.

Other procedural matters

58. Section 17(5) states that any public authority relying on section 12(1) must within the time limit for complying with section 1(1) give the applicant a notice stating that fact. The time limit for complying with section 1(1) is found in section 10(1). This states that a response should be issued as soon as possible and in twenty working days in any event.
59. In this case the public authority failed to respond to the first five requests within the statutory timescales. The Commissioner therefore finds ten breaches of section 10(1) [as it failed to comply with sections 1(1)(a) and 1(1)(b) for each of the five requests within the statutory time limit] and five breaches of section 17(5).
60. The Commissioner notes that the public authority recognised, explained and apologised for these breaches at the time of its internal review.

The Decision

61. 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:
 - *It applied the costs exclusion [section 12(1)] correctly to the six aggregated requests that the Commissioner has considered in this case.*
62. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - *It breached section 10(1), as it failed to issue a section 12 notice in twenty working days of receiving five of the requests ;*
 - *It breached section 17(5), as it failed to issue a section 12 notice in twenty working days for five of the requests ; and*

- *It also failed to comply with its obligations to provide reasonable advice and assistance and breached section 16(1).*

Steps Required

63. The Commissioner requires no steps to be taken. He has explained why he does not require remedial steps in respect to the section 16(1) breach for the reasons specified in paragraph 57 above.

Right of Appeal

64. 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

65. 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.
66. 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 20th day of September 2010

Signed

**Andrew White
Complaints Resolution Group Manager**

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

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) 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.

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

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

Section 10 - Time for compliance with request

(1) 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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

Section 12 – Exemption where cost for compliance exceeds the appropriate limit

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 to be estimated.

Section 16 – Duty to provide advice and assistance

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

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 17 - Refusal of request

(1) 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) 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.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

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

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