

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 November 2010

Public Authority: Haringey Council
Address: River Park House
225 High Road
London
N22 8HQ

Summary

On 7 September 2009 the complainant made an information request to Haringey Council (the 'council') for information regarding properties to let which he had unsuccessfully applied for. The council provided a partial response on 14 October 2009 and in an internal review refused the request as being vexatious under section 14(1) of the Freedom of Information Act 2000 (the 'Act'). During the course of the investigation, the Commissioner informed the council of his preliminary view that the request was not vexatious. The council then applied section 12(1) of the Act to the request. The Commissioner finds that the council was not entitled to apply section 14(1) to the request but was correct to apply section 12(1). He requires that the council should now provide advice and assistance to the complainant to clarify what information could be provided under the Act within the cost limits. The Commissioner also finds a number of procedural breaches.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 7 September 2009 the complainant made an information request to Haringey Council (the 'council'). This was sent to the lettings team.
3. He wanted to know why a particular property at [address redacted] had been withdrawn from a Home Connections list on the internet. He asked whether the property would be re-advertised and what was happening with it in the future.
4. On the same day, the complainant made another information request to the lettings team and to the council's customer services department. He had already complained about the online information provided by the council regarding bids made to the council for the allocation of properties. He was now trying to obtain information about the bid process that the council applies in order to allocate properties to tenants. He referred to this as his 'stage two request' and asked the council to provide him with:
 - i. Information concerning properties which were the subject of his bids to the council. There were many properties which he had bid for which were absent from the council's online list.*
 - ii. Detail concerning the winning priority of those who won the bids.*
 - iii. An explanation of how and why it is that in some cases applicants with less priority points than the complainant were offered the properties upon which he had placed a bid.*
5. The complainant did not specify how many properties his request referred to. On 23 June 2010 the council informed the Commissioner that in total the complainant had made 64 bids.
6. The council acknowledged receipt of this request on 7 September 2009.
7. On 10 September 2009 the complainant requested that the council should provide the missing information directly to him "in some other way". This was later confirmed to mean in hard copy format.
8. On 11 September 2009 the complainant clarified his request and asked that he should be provided with the winning priorities and registration dates together with his position and the number of bids. The

complainant repeated his request that the information should be provided in some other way (ie. in some permanent form).

9. He was particularly keen to receive this information immediately with regard to 11 properties which he listed. He expected the rest to be sent at a later date.
10. He specified that with regard to these 11 properties in addition to the above information, he would like the details of the priorities of those bidders who were higher than he was on the shortlist, or at least the top 7 bidders. The Commissioner has not interpreted this as a clarification of the whole request but considers it to be an additional requirement specifically for the listed 11 properties.
11. On 11 September 2009, the council informed the complainant that it would be unable to provide him with personal details of other people's bids due to the Data Protection Act 1998 (the 'DPA'). However his 'stage two request' was being dealt with.
12. The complainant replied on the same date to remind the council that he was expecting a response to his request by 6 October 2009.
13. On 14 September 2009 the complainant repeated that by priorities he meant priorities with registration dates. He also clarified that he wanted the information sent by email and in hard copy format.
14. On 12 October 2009 the complainant wrote to the council and reminded it that he was waiting for a response.
15. On 15 October 2009 the council wrote to the complainant and informed him that his complaint had been passed to the Team Leader for Housing Assessments. It expected that the complainant would receive a response shortly.
16. On 15 October 2009 the complainant complained to the council that he had still not received a response.
17. On 15 October 2009 the council addressed the points made by the complainant in his letter of complaint. It explained how the complaint had been handled and again indicated that a reply had been prepared and was being checked.
18. A response dated 14 October 2009 was sent to the complainant. This addressed one part of his request which had been passed to the council's Housing Office on 17 September 2010. This response clarified

that it understood the complainant required information about 11 properties advertised through Haringey's Home Connections Scheme and their winning priorities.

19. The council therefore provided information about 11 properties and where possible gave the points of the top 7 shortlisted applicants. The council informed the complainant where his application was ranked and also where preference had been given to council transfer applicants.
20. On 21 October 2009 the complainant requested an internal review of this response. He raised the following issues:
 - i. The response to his request had been late.
 - ii. The response failed to refer to the withdrawal of the property at [address redacted]. He had queried this in two emails dated 7 September 2009.
 - iii. The response failed to provide the registration dates with each winning priority. He had raised this in his email of 11 September 2009.
 - iv. The response did not provide all the information missing from the Bid Results page (as specified on 7 September 2009). It was a partial response provided in response to his email of 11 September 2009 which gave 11 properties he was interested in as a priority.
 - v. As the response was so late he was not prepared to accept the 7 highest bidders per property but wanted all those bidders who were higher than he was in the shortlist. He wished [address redacted] to be included on the list.
 - vi. He listed 6 of the cases in which the highest bidders and registration dates were not listed.
 - vii. The response was not clear whether an exemption had been provided to any withheld information.
 - viii. The complainant also complained about the delays involved in this case and requested copies of relevant policy documents with a full explanation of the policy plus dates the policy was decided upon, names of the decision makers involved and dates of implementation.

21. On 11 November 2010 the council provided a review of its response to the complainant. It addressed the above points.
22. The council explained that the internal review requested by the complainant on 21 October 2009 had raised the issue of the council's late response. The council explained this had been dealt with in a separate internal review and that this response had been sent on 22 October 2009.
23. The complainant had also complained that his request had not been answered. The council explained that it appeared the response dated 12 October 2009 replied to an email dated 11 October and not the request made on 7 September 2009. The council had received multiple requests for information from the complainant which had caused the confusion.
24. The council explained that it now considered that the request of 7 September 2009 should not have been dealt with under the Freedom of Information Act 2000 (the 'Act') as the request for the complainant's bid positions is his own personal information. The council explained that it considered the information requested to be exempt under section 40(1) of the Act.
25. The Council advised the complainant that should he wish to complain about the way his housing application had been dealt with, he should refer the matter to the council's complaints process and then to the Local Government Ombudsman if necessary. The Act provides the right to access recorded information not the right to ask questions of a public authority.
26. The council considered that this request was vexatious and argued that it did not have to reply under section 14(1) of the Act.
27. The council considered that the complainant's request had no serious purpose or value as the requested information would not help him to advance in the housing process. It believed that providing the information would impose a significant burden upon the authority. The council also considered that there was an element of harassing the authority in these requests.
28. The council also addressed four other related requests that the complainant had made. It explained that where it considered requests to be vexatious, it would not respond. It would however consider each one on its individual merits.

The Investigation

Scope of the case

29. On 12 January 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- i. He had not received the information that he had requested.
 - ii. His response was not within the 20 working day deadline
 - iii. This was a request for information which was related to others he had made.
 - iv. He had emailed two requests to the council on 7 September 2009. He explained that the council refused some of the information as it was the personal information of other people and therefore exempt under the Data Protection Act 1998. The council explained that other parts of the requested information were routinely available via its website.
 - v. The council had failed to provide advice and assistance to him.
 - vi. He did not accept that his requests were vexatious.
30. On 22 March 2010 the Commissioner negotiated with the complainant that this case would focus upon and be limited to the information requested on 7 September 2009 (and clarified on 11 September 2009) which had not been provided. This therefore concerned three points:
- The reasons why the property at [address redacted] had been withdrawn from the relevant web page.
 - Information concerning the properties the complainant had unsuccessfully bid for. He required the winning priorities and the registration dates of each successful bid together with his position and the total number of bids.
 - An explanation of how and why in some cases applicants with less priority points than those of the complainant were offered properties in preference to him.
31. The Commissioner has limited the scope of this Notice to the above three points except for the information concerning the complainant's final bid position which he considers to be the complainant's personal data. He is therefore dealing with this matter separately under the DPA.

32. The scope of this case to be considered in this Notice is therefore:
1. The reasons why the property at [address redacted] had been withdrawn from the relevant web page;
 2. (i) The winning priorities of the applicants who were successful in their bids for properties;

(ii) The registration dates when the above applicants made their bids for each property;

(iii) The total number of bids that was made with respect to each property;
 3. An explanation of how and why in some cases applicants with less priority points than those of the complainant were offered properties in preference to him.
33. The above three points are referred to as points 1, 2 and 3 in the remainder of this Notice. With respect to point 2, of the 64 bids which the council considers the complainant has made, the council has provided information for 11 of them. It did not, however, provide the registration date of the winning applicants for these properties. These remain outstanding.
34. The complainant wished his complaint to encompass other requests for information that he had made to the council; however he agreed to treat these as separate requests and accepted that this case would focus upon the request made on 7 September 2010, as outlined in the three points agreed on 22 March 2010.

Chronology

35. On 22 March 2010 the Commissioner wrote to the council and explained that as a preliminary assessment he would consider that the only personal information in this request which would be exempt under section 40(1) of the Act is the complainant's bid position. This has been removed from the scope of this Notice.
36. The Commissioner explained to the council that he would not consider details concerning bids made for properties by other individuals to be exempt under section 40(1) of the Act as this is not the complainant's own personal data. The Commissioner provided advice to the council to assist it in providing a response under the DPA.

37. The Commissioner explained that as a preliminary assessment, he would consider that the council should provide the outstanding information regarding point 2 to the complainant.
38. With respect to points 1 and 3, the Commissioner asked the council to consider whether it held recorded information which could be provided to the complainant under the Act.
39. The Commissioner asked the council to provide further arguments should it wish to maintain its position regarding its application of section 14(1) and section 40(1) to the request.
40. On 13 April 2010 the council wrote to the Commissioner and explained the reasons why the property at [address redacted] had been withdrawn from the relevant web page. This was because it was offered to a direct let case which means that the property was offered directly to an applicant and was not open to bidding. The council explained that it had not previously dealt with this question as a Freedom of Information (FOI) request.
41. The council explained that it had treated point 2 of the complainant's 'stage 2 request' as an FOI request because he had requested this on 11 September 2009. This earlier request made on 7 September 2009 regarding [address redacted] had not been picked up as an FOI request. The council explained that it had received a large volume of emails and overlapping requests to a number of its staff from the complainant and that it was difficult to keep track of his requests.
42. The council explained that it considered point 2 to be vexatious and provided its reasons for this.
43. The council also explained that it did not consider point 3 to be a valid FOI request. It did not consider that the Act gave individuals the right to be given answers to questions they would like to put to a local authority. It explained that it had already provided the complainant with a copy of its Lettings Policy which gives details of the points system used by the council. It had also explained the allocation of properties to the complainant to assist his understanding of the process. The council explained to the Commissioner that it therefore considered this part of his request to be vexatious.
44. On 29 April 2010 the Commissioner wrote to the complainant and provided him with the council's explanation regarding point 1 and point 3. He explained that he considered these parts of the request had now

been addressed. The Commissioner therefore focused his investigation on what he considered to be the outstanding elements of point 2.

45. On 29 April 2009, the Commissioner explained to the council that he considered that a question such as asked in point 3 should be treated as an FOI request if recorded information could be provided to answer the query.
46. The Commissioner confirmed that he would progress this case with an investigation into the council's refusal to provide the information as outlined in point 2. He requested further arguments concerning the application of section 14(1) to this point. The council was asked to respond by 14 May 2010.
47. On 21 May 2010 the council provided further arguments and evidence to the Commissioner to demonstrate that the complainant's request for bid information was vexatious.
48. On 9 June 2010 the Commissioner wrote to the council and explained why as a preliminary conclusion he did not consider that part of the information request regarding bids for properties (as outlined in point 2) to be vexatious.
49. On 23 June 2010 the council wrote to the Commissioner and asked him to review his initial assessment. It provided further arguments in support of its application of section 14(1), including an estimate of the total time it would take to provide the bidding information, as outlined in point 2 of this request. This included the remaining 53 bids for properties in addition to the 11 already provided.
50. On 13 July 2010 the Commissioner informed the council that he had reconsidered his initial assessment and was still of the opinion that point 2 of the outlined request was not vexatious. In view of the estimate of time which the council has provided, he suggested that the council may wish to apply section 12(1) to the request.
51. On 13 July 2010 the council confirmed that it would conduct a representative search of the properties in order to provide a further estimate of the time it would take to retrieve the information regarding the bid information for the remaining 53 properties.
52. On 12 August 2010 the council provided the Commissioner with a breakdown of the time it would take to provide the requested information outlined at point 2 regarding the remaining 53 properties. The time already spent on providing the information for the first 11 properties would be added to this estimate (3½ hours).

53. On 10 September 2010 the Commissioner wrote to the complainant and explained that the council now wished to apply section 12(1) to the requested bidding information, as outlined in point 2 of the request. He was asked if he would wish to narrow his request.
54. On 5 October 2010 the complainant indicated that he was not satisfied with the Commissioner's preliminary assessment. He was not satisfied with the response of the council to the three points which defined his requests and believed the council had deliberately delayed answering his requests. He also required a specific answer to points 1 and 3 that would give him information regarding the circumstances of each case, without breaching the DPA.

Analysis

55. The full text of section 10(1), section 12(1), section 14(1), section 16(1), section 17(5) and section 40(1) is available in the Legal Annex at the end of this Notice.
56. During the course of the investigation, the Commissioner attempted to informally resolve points 1 and 3 of the request whilst concurrently conducting enquiries regarding the application of section 14 and 12 to point 2. Ultimately, this attempt at informal resolution proved unsuccessful; however the arguments made by the council regarding the application of section 14 and section 12 to point 2 are relevant to all 3 parts of the request.

Substantive Procedural Matters

Section 14

57. Section 14(1) states:

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

58. The Information Commissioner's published guidance to the question of vexatious requests (Awareness Guidance 22) explains that in order to judge a request as vexatious under Act, it is necessary to make strong arguments under one or more of these headings:

- Could the request fairly be seen as obsessive?

- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

This guidance can be found on the website of the Information Commissioner's Office (the 'ICO') at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

59. It is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner (EA/2007/0130)*:

"a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach..." (paragraph 20).

Could the request fairly be seen as obsessive?

60. The guidance to vexatious requests explains that the wider context and history of a request is important to this question. The council has provided the Commissioner with the correspondence between the complainant and the council from 9 February 2009, leading up to the clarified request of 11 September 2009. The council has also listed 23 emails, requests and telephone calls made between 11 September 2009 and 4 December 2009. However the Commissioner has not included these in his vexatious assessment as they were made after the initial request was made and clarified.
61. This correspondence between 9 February 2009 and 11 September 2009 consists of 12 emails or telephone calls between the council and the complainant. Although this is not a comprehensive account of all this dealings with the council, it is the correspondence recorded on the council's complaints and Freedom of Information database.
62. This correspondence is concerned with the complainant's housing application and bidding information regarding properties that he had applied for. They include a number of complaints to the council

regarding this process and regarding the viewing of different properties. In addition, the complainant has complained to the council regarding his current accommodation.

63. It is apparent that the complainant has established a pattern of making complaints to the council and that his correspondence is concerned with the same issue: his need to be allocated new accommodation. However, although many of the points he raises are repeated, it is apparent that this is borne out of frustration with the council and what he perceives to be its poor handling of his application for accommodation.
64. The request made on 7 September 2009 regarding properties the complainant had unsuccessfully bid for was therefore the culmination of a series of complaints and requests made to the council. Although the complainant did not make it clear from the outset that he required information under the Act, he did specify that this was the case on 11 September 2009 when he clarified his request.
65. The ICO's guidance on this matter states that it is easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they have independent evidence on the issue. In the case of *Welsh v Information Commissioner EA/2007/0088 (16 April 2008)*, the Information Tribunal found that "it is the persistence of [the] complaints, in the teeth of the findings of independent and internal investigations, that makes this request, against that background and context, vexatious".
66. The Commissioner does not consider that this applies to this case. The requests made by the complainant up to 11 September 2009 are concerned with the same topic, but stem from a perceived failure of the council to deal with his housing application. No independent findings have been presented.
67. Likewise, the Information Tribunal in the case of *Ahilathirunayagam v Information Commissioner and London Metropolitan University EA/2006/0070 (20 June 2007)* found that the request in that case was vexatious as the complainant was asking for information he already possessed. Again, this does not apply in this case.
68. The correspondence up to 11 September 2009 does suggest that the complainant has frequently contacted the council; however he does appear to be making valid complaints. He complains about a visit to a property, about information missing from the housing website and about issues with his current property. His information request is

actually a request for information regarding his bids. He did not have this information and the Commissioner would consider it to be a reasonable request.

69. The Commissioner therefore does not consider that the request made on 7 September 2009 and clarified on 11 September 2009 is obsessive.

Is the request harassing the authority or causing distress to staff?

70. The council has argued that the complainant has not only generated the above correspondence but that he has telephoned the Lettings Team on many occasions and is well known by the staff in this team. He has emailed and called staff repeatedly and often several times a day.
71. In addition, the council has argued that most of his emails include demands such as "please acknowledge this email immediately" and that he expects responses "straight away" or "by the close of business today".
72. In its internal review of 11 November 2009, the council informed the complainant that the Act does not give him the right to demand answers to questions that he would like to put to a local authority. The council pointed out that the Act does not exist to enable people to avoid dealing with issues through the proper channels. It argued that the complainant could make a complaint through the council's complaints process and the Local Government Ombudsman if he considered that his housing application had not been dealt with according to the council's policies.
73. The council argued that there was an element of harassing the authority in the complainant's request when it was considered with other requests for information and formal complaints he had submitted.
74. It is apparent from the pattern of correspondence between 9 February 2009 and 4 December 2009 that there may be an element of harassment in the emails and telephone calls the council has received. This is particularly relevant when it is considered that the complainant now has been allocated a council property but is still making demands upon the council regarding the same topic.
75. Although it considers that contact following the internal review of 11 November 2009 was "unpleasant and did definitely cause distress", the council has described the early contact between the complainant and the council as harassing rather than distressing. The council has

argued that it is difficult to prove distress; however this is not necessary if there is evidence of harassment.

76. However, with respect to this complaint, the Commissioner can only assess the pattern of requests up to the time the clarified request was made on 11 September 2009. Having examined the relevant correspondence, the Commissioner considers that the contact initiated by the complainant up to this point was motivated by a genuine desire to obtain information which was not forthcoming. Although the motivation of the complainant is not the primary consideration, the Commissioner does not consider that the request itself was harassing.
77. The relevant issue here is the request. To request information regarding the bids made for properties is reasonable. The request may have been preceded by complaints and demands for immediate replies, and it is arguable that there is an element of harassment in the correspondence; however, the request itself is a reasonable one and the correspondence leading up to it may reasonably be judged to reflect frustration.

Would complying with the request impose a significant burden in terms of expense and distraction?

78. The council initially explained to the Commissioner that the burden of providing the additional information was not in itself significant; however, when it calculated the amount of time that would be involved, it estimated a figure in excess of 21 hours to provide all the information with respect to the bids for properties as outlined in point 2.
79. The council has also pointed out that the complainant has already taken up a considerable amount of officer time. The council considers that it has behaved reasonably and in accordance with its own policies. It understands that it has a duty to explain what has happened and why to the complainant, however it does not consider that it should have to divert officers away from their substantive duties to answer his every demand.
80. The council has explained to the complainant why he was not allocated the properties in question. It considers that to provide a further list of properties that he unsuccessfully bid for would be a waste of officer's time in a pressurised service. The council explained that it would take officer time to research and provide this detail.
81. The Commissioner appreciates the strength of these arguments and

understands that responding to the complainant's requests does take up valuable council time. However, once he received the above estimate, in line with the ICO's guidance the Commissioner suggested to the council that if one of its main concerns was the cost of compliance, it should consider applying section 12(1) to the request.

Is the request designed to cause disruption or annoyance?

82. The council is unable to prove or disprove that the complainant intended to cause disruption or annoyance in making his information requests. However, the council argues that the effect was disruption and annoyance in all circumstances and the council considers it not unreasonable to infer that this was his intention.
83. The Commissioner considers it arguable that that the nature of the emails and telephone calls might have a cumulative effect of causing annoyance and becoming disruptive to the council before the request was made on 11 September 2009. The guidance is clear that the context of a request may be taken into account. However, it is difficult to prove a requestor's intention and the guidance also states that a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests.
84. In this instance the request for the winning priorities and the registration dates of each successful bid together with the complainant's position and the total number of bids for each particular property would not in itself appear to be intended to cause disruption or annoyance. It would appear to be a request for information from an individual who was questioning the council's housing allocation policy.
85. The Commissioner does not therefore consider that the request is designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

86. The council is of the opinion that the complainant's request has no serious purpose or value as the information required would not help him advance in the housing allocation process. He has now been allocated a council property. The council has explained to the complainant why he was not allocated particular properties and has addressed his complaints. He has been given details of 11 properties and sufficient information to understand the council's housing allocation process. He has been given the option of pursuing his complaint with the Local Government Ombudsman.

87. The Commissioner has considered these points and appreciates that there are formal mechanisms in place to pursue a complaint against the council. The Commissioner also understands that the complainant has received detailed information and explanations from the council regarding its housing allocations policy.
88. However, despite the considerable exchanges that have occurred since the request only those circumstances relevant to the time of the application of section 14 can be considered. The Commissioner considers that at the time the request was made, the request was reasonable in that the complainant required information regarding his failed applications for council housing. He wished to question the process of the council's housing allocation. At the time the request was made, it had a serious purpose.

Conclusions

89. In the light of the above arguments the Commissioner's conclusion is that the council should not have refused the bidding information as outlined in point 2 of the request as vexatious. It should not have refused point 3 of the outlined request as vexatious. Although it is part of a related correspondence stream, the Commissioner has considered the council's position at the time the whole request was made and concluded that the request itself was a reasonable request for information regarding the failed housing bid of the complainant.
90. The Commissioner has therefore proceeded to consider the council's application of section 12(1).

Section 12

91. Section 12(1) states:

'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.'

92. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. For public authorities which are not part of central government, this cost limit is currently set at £450 and equates to 18 hours of work at £25 per hour.

93. Point 2 of the complainant's request had asked for information regarding bids for property which he had made with no success. On 23 June 2010, the council informed the Commissioner that the complainant had made 64 bids. On 14 October 2009, the council had provided information about 11 bids. This took 3½ hours to provide and left 53 records to check. The council estimated that it would take at least 20 minutes each to retrieve the information for each bid. The remaining 53 bids would therefore take 17½ hours to retrieve. The estimate for the bidding detail as outlined in part 2 of the request therefore amounted to a total of 21 hours. In addition, there remains the outstanding registration dates not provided for the first 11 properties.
94. The council has explained the process of extracting the requested bidding information. There are three files which would need to be referenced: OHMS, Home Connexions and the MP1 paper files. Most of the information is held on paper files. The following steps would then be taken:
- Check the complainant's account for address and reference number of a property.
 - Go to the property list in OHMS and find a short list of bidders and the winner's details and date the property was advertised. Some properties are advertised 2 or 3 times so there are 2 or 3 shortlists to check.
 - Find the winning bidder's record and get the date they registered.
 - Find the MP1 paper file (filed by the date it was advertised) for the accurate bidding positions.
 - The paper files for Housing Association properties are kept in the office only 6 months. They are then sent to storage. So to retrieve these files would take longer: approximately an additional 20 minutes to locate, retrieve and extract the information.
95. The council looked at the details of 3 properties. The first two took over 30 minutes each. However, this did not provide all of the information requested. It was necessary to check the paper files to extract the bidding position information. These were not available in this instance as the files may have been archived or might have been in use by another team.
96. The third case took about 15 minutes because the team leader was able to make an 'educated guess' for the bidding position. To check the paper file and confirm the bidding position would have taken another 10 minutes.

97. The council therefore believes that its original estimate of approximately 20 minutes per case was correct but optimistic. The council also argued that should the task be performed by a more junior member of staff, it would have taken 40 to 45 minutes for the first and second property and 15 to 20 minutes for the third property.
98. The Commissioner does not consider it appropriate that the council should make educated guesses about the information requested. However he is satisfied that it would take an average of 20 minutes per bid to locate and retrieve the requested information.
99. The Commissioner considers that the council was correct to refuse the bidding detail as outlined in part 2 of this information request under section 12(1) of the Act. He is therefore satisfied that it would take longer than 18 hours to locate, retrieve and extract the information relevant to this whole request in its current form and therefore cost more than £450.

Section 16

100. Section 16(1) states 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".
101. The Commissioner considers that as the council should have applied section 12(1) of the Act to the whole information request at the time it was received. It should therefore have considered whether it could offer the complainant advice and assistance under section 16(1) of the Act.
102. On 10 September 2010, the Commissioner offered the complainant the opportunity to narrow that part of the request regarding properties he had made bids for (as outlined in point 2) so that it fell within the cost limit. The complainant has declined this suggestion; however, he considers he should have been offered advice and assistance by the council earlier in the proceedings.
103. During the course of the investigation, the complainant indicated that he would like a specific answer to parts 1 and 3 of the request regarding the reasons why he was not offered particular properties. He required information regarding the circumstances of each case, without breaching the DPA. The Commissioner initially accepted the council's explanation that the properties had been withdrawn in accordance with

its Lettings Policy and points system. This has been explained to the complainant and the policy provided; however the complainant has indicated that he requires further detail.

104. Whilst the Commissioner recognises the efforts of the council to provide answers to points 1 and 3, it is apparent that the complainant requires specific detail regarding the reasons why other applicants were successful in bidding for properties where he was not. The Commissioner makes no judgement regarding the provision of such detail; however this remaining issue requires consideration under the Act.
105. The council is therefore required to offer advice and assistance regarding the nature of any further recorded detail which it may hold with respect to parts 1 and 3 of the request to allow the complainant the opportunity to make a refined request for this information. Alternatively it should confirm to the complainant that there is no further recorded information that it holds.
106. In failing to offer the complainant advice and assistance at the time the request was received, the Commissioner finds the council to be in breach of section 16(1) of the Act.

Procedural Requirements

Section 10

107. Section 10(1) of the Act states the following:

"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."

108. The request was made on 7 September 2009 and clarified on 11 September 2009. The council provided a partial response on 14 October 2009 and a refusal notice within the internal review on 11 November 2009. The first response was therefore dated 24 working days after the clarification was sent.
109. The Commissioner therefore finds that the council failed to comply with section 10(1) as it did not inform the complainant whether it held the information within 20 working days.

Section 17

110. Section 17(5) states 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 notice stating that fact”.
111. The clarified request was made to the council on 11 September 2009; however, the council did not inform the complainant that it wished to apply section 14(1) to this request until the internal review which was 11 November 2009, 44 working days later. The council confirmed to the Commissioner that it wished to apply section 12(1) to the request on 13 July 2010.
112. The Commissioner therefore finds the council to be in breach of section 17(5) of the Act for failing to issue a refusal notice within 20 working days of receipt of the request.

The Decision

113. 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 Commissioner considers that the council was entitled to refuse this information request in its entirety under section 12(1) of the Act.

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

- The Commissioner finds that the council was not entitled to apply section 14(1) to this request.
- The Commissioner finds that the council failed to comply with section 10(1) as it did not inform the complainant whether it held the information within 20 working days.
- In failing to inform the complainant of its application of section 14(1) or section 12(1) to this request within 20 working days, the Commissioner finds the council to be in breach of section 17(5) of the Act.

- In failing to offer the complainant advice and assistance the council is found to be in breach of section 16(1) of the Act.

Steps Required

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

- Provide the complainant with advice and assistance concerning further information which it may hold concerning parts 1 and 3 of the request. The council should either:
 - Obtain an understanding of the information held to reassess the request and consider the potential places the information might be held. To then consider whether the request can be complied with within the remaining time available (14.5 hours) to enable the complainant to submit a refined request; or
 - confirm that no further detail is held.

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

Failure to comply

116. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

117. Although they do not form part of this Decision Notice the Commissioner wishes to highlight as a matter of concern the failure of the council to consider requests 1 and 3 as requests for information under the Act. In particular, the council explained to the Commissioner that it did not consider request 3 to be a valid FOI request, but rather a question which the Act did not oblige it to answer.

118. The Commissioner has explained to the council that it should treat such questions as requests for information under the Act if recorded information could be provided to answer the query.

Right of Appeal

119. 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 sent.

Dated the 30th day of November 2010

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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.”

Cost of compliance

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.”

Vexatious 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”

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”.

Refusal of Request

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 notice stating that fact.”

Personal information.

Section 40(1) provides that –

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