

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 October 2010

Public Authority: Foreign and Commonwealth Office
(The 'FCO')

Address: Information Management Group
Information and Technology Directorate
Old Admiralty Building
London
SW1A 2PA

Summary

The complainant made three requests for information about money provided by the UK to Zimbabwe in the 1980s. He also explained that he believed that specified sums of money were provided to Mr Robert Mugabe's Government at this time and asked for 'accountability' about those amounts. The public authority provided some recorded information that it held about this matter. For the first two requests it explained that it was all the relevant recorded information it had. For the third request, it explained that it was unable to process the request as it would take work beyond the costs limit to do so [section 12(1)].

The Commissioner cannot accept, on the balance of probabilities, that no further recorded information is held for the first two requests so has found two breaches of section 1(1)(a). However, he is satisfied that section 12(1) applies appropriately to the three requests taken together as the work required to process them considerably exceeds 24 hours. He also found that there were procedural breaches of section 10(1) and 17(5), but requires no remedial steps to be taken in this case.

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. Prior to the formal announcement of Zimbabwe's independence in April 1980, a conference, chaired by Lord Carrington, the then Foreign Secretary, was held at Lancaster House, London. The conference considered the constitutional terms of independence. Part of the agreed Constitution related to the freedom from deprivation of property.
3. One of the matters considered in the negotiations, although not stated in the Lancaster House Agreement, was land reform. It was decided that the British and American governments would purchase land from willing white settlers who could not accept reconciliation and a fund was established to pay them. This system was named the 'willing buyer and willing seller' principle. Between 1980 and 1985, the UK government provided £47 million for land reform.
4. The complainant is of the view that further money was paid by the UK government to Zimbabwe for land reform. He is also of the view that the funds may have been misappropriated and that this has adversely affected him.

The Request

5. The complainant made a request for the information embraced by request [1] and [2] of the modified request detailed in paragraph 19 below. The public authority responded that it believed that the cost limit applied and asked the complainant to narrow his request. The result was the request that will be considered in this case. The public authority varied its position in respect of this later request because it believed that the work it had already done enabled it to provide the information for elements [1] and [2] without engaging the cost limit.
6. On 23 July 2009 the complainant wrote a detailed letter expressing dissatisfaction and requested the following information in accordance with section 1(1) of the Act [the numbers have been added by the Commissioner for clarity in this notice]:

[1] *'£20 million to fund land resettlement, name of farms purchased and area's [sic] please.*

[2] *£27 million for war damage as compensation, as agreed by Lord Carrington in correspondence with him. Names please of all who were compensated (paid) companies [,sic] individuals [sic] and dates.*

[3] *Now I am lead [sic] to believe on further research that £84 million was the true figure paid to Mugabe and his corrupt regime in the 1980's adding another £37 million in land reform or such misappropriation of government funding, please give accountability of these amounts.'*

7. On 4 January 2010 the public authority issued a response. It dealt with elements [1] and [2] together. It disclosed some information and explained that it held no more. It said that the complainant might want to contact the Department for International Development (DfID) who may hold further information and provided its details. In respect of element [3] it explained that it was applying the section 12 cost limit. It was doing this because it believed that a complete response to this enquiry would involve more than 3.5 days (or £600) work. It explained this was because it would be required to search all its files on Zimbabwe from 1980 to the date of request. It explained that this was a vast amount of information and invited the complainant to narrow down his request to enable it to be dealt with within the cost limit.

8. On 26 January 2010 the complainant expressed his dissatisfaction about the response. He explained:

'You have had 30 years+ in which to have the files or documents in order and to be made accessible, or have you not heard of computers?'

9. He also explained that there were considerable concerns about the implementation of the policy and that the information that was disclosed asks further questions. He complained about the delay and that in his view the response was frivolous, lacked depth and was evasive. He said that he would approach DfID too. He explained that in his view element [2] had not been answered at all. He said that he did not believe section 12 was appropriate because of the computer age and that the retrieval and extraction of the information should pose little problem. He also explained what sort of information he was expecting.

10. On 31 January 2010 the complainant followed this letter up with a further expression of dissatisfaction about the way his information request had been handled.

11. The public authority treated the complainant's expressions of dissatisfaction as a request for an internal review and on 12 March 2010 the public authority communicated the results. It explained had considered both of the complainant's letters and that it had considered all three elements of the request again. It used the opportunity to explain the searches that had been conducted in much more detail and also confirmed that the legislation was limited to the provision of relevant recorded information.
12. It then explained its position in respect to element [3]. It stated that it held a large number of files that may be relevant and that it only held these files in paper format. It said that it believed that the work required to search all of these files would engage section 12(1) as it would exceed the cost limit. It explained that the paper files are electronically catalogued but this system did not specifically identify relevant information which could only be done through a manual search. It would be required to search all its papers files from 1979 to the date of the request and this would exceed the cost limit of £600. It also considered its compliance with the duty to provide him with advice and assistance under section 16(1) and decided that its offer to the complainant to enable him to consider how he would like to narrow the request was adequate.

The Investigation

Scope of the case

13. On 31 January 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
14. On 15 February 2010 the Commissioner explained to the complainant that he would be required to wait for the outcome of the internal review.
15. On 15 March 2010 the complainant wrote back to the Commissioner and provided a copy of the internal review response. He explained that he was unhappy with it because:
 - He requires information about what the money mentioned in elements (i) and (ii) was spent on.
 - He is particularly interested in information that constitutes evidence about properties that used to belong to him.

16. 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 right of access to recorded information held by a public authority. The complainant has also confirmed to the Commissioner that he has gone on to make a further request to DfID. DfID is a separate public authority and, as of the date of this Notice, the Commissioner has not received any complaint under section 50 of the Act arising from this request.

Chronology

17. 23 March 2010: The Commissioner wrote to the public authority to explain that he had received an eligible complaint and for it to provide evidence about its position in this case.
18. 9 April 2010: The public authority replied to the Commissioner. It explained that it did not withhold any information in this case.
19. 16 April 2010: The Commissioner wrote to the public authority to ask for one relevant piece of correspondence.
20. 19 April 2010: He received that correspondence from the public authority.
21. 21 April 2010: The Commissioner telephoned the public authority to make further enquiries. He consolidated what he said in an email.
22. 4 May 2010: The Commissioner spoke to the complainant on the telephone. The complainant explained the historical background of the situation and what sort of information that he believed was held.
23. 5 May 2010: The Commissioner addressed a further enquiry to the public authority as a result of the telephone conversation.
24. 14 May 2010: The public authority issued a detailed response to the Commissioner's enquiries. It explained its full position. It also detailed the searches that had been conducted for information held for elements [1] and [2] and why it believed section 12(1)¹ applied to element [3]. These submissions will be considered in more detail in the

¹ All sections of the Act referred to in this Notice are reproduced in full in the legal annex that is attached to the end of it.

analysis section below. The Commissioner received this letter on 18 May 2010.

25. 18 May 2010: The complainant called the Commissioner for an update about this case and explained that he was minded to use other forums to deal with the underlying matter. The Commissioner explained the nature of his role and that he would complete an appropriate investigation for this case.

Analysis

Substantive Procedural Matters

Is further relevant recorded information held for elements [1] and [2]?

26. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority is obliged to provide. The date of the request in this case is 23 July 2009.
27. The public authority's position is that it has searched all the relevant recorded information and provided the complainant with all the relevant recorded information that it still held at the date of the request (23 July 2009) on 4 January 2010. It therefore does not hold any further relevant recorded information in this case.
28. The complainant's view is that the recorded information that has been provided is inadequate. He believes that there ought to be further recorded information held about the provision of large sums of public money. In particular it was important to understand how the money was distributed to avoid possible corruption.
29. When investigating cases involving a disagreement as to whether or not further information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.

30. The standard of proof was confirmed by the Tribunal decision of *Innes v Information Commissioner* (EA/2009/0046). It stated at paragraph 41 that:

" This Tribunal is not prepared to introduce any kind of sliding scale in terms of the standard of proof beyond the balance of probabilities. The House of Lords and other senior courts in recent decisions have confirmed the importance of maintaining the core principle -- in civil proceedings – that the correct test is the balance of probabilities. It is only in relation to Asylum and childcare and child safety issues that there is any kind of variation."

31. The Commissioner will apply this standard of proof to this case.
32. The Commissioner has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in the *Bromley* case (mentioned above). It explained that to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It also requires considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
33. The public authority has evidenced to the Commissioner that in its view the scope of the request is connected to the £47 million that has widely been publicised as being the amount of money provided by the UK exclusively for land reform. It has therefore searched its records for the information that has been asked for. The search in element [1] was for the name of the farms bought and the areas that they were in. The search for element [2] was for the names of the individuals or companies who received compensation and the dates the money was paid.
34. The Commissioner believes it is important to detail the nature of the information that was provided on 4 January 2010:
1. Table from the Report of Overseas Development Agency (ODA) Land Appraisal Mission to Zimbabwe dated 23 September – 4 October 1996. Part of this report provided a table of the land purchased by the Government and now leased which contained the following fields:
 - Name of the farm.

- Its district.
 - Its size in hectares.
 - Its natural region; and
 - Remarks about how it was leased.
2. Table from Value for Money Report (Special Report) of the Comptroller and Auditor-General on the Land Acquisition and Resettlement programme. Part of this report provided a table of the land purchased by the Government that turned out to be unsuitable for resettlement and contained the following fields:
- Name of the farm.
 - Acquisition date.
 - Its size in hectares; and
 - Cost in \$US (total \$232, 900).
35. Having considered the information provided, the Commissioner does not believe that it can be said conclusively to provide a complete record of all the farms acquired under the 'willing buyer and willing seller' principle. He also believes that other base information would have been required to create the information that has been found.
36. The public authority provided evidence to the Commissioner that it had conducted the following searches:
- (i) Search of the electronic files in London.
 - (ii) Search of the electronic files in Harare.
 - (iii) Search of the paper registry files in Harare.
 - (iv) Search of the paper files in the Zimbabwe Unit in London. This search was of approximately 40 files and 2 ODA reports [each around 200 pages long] that were thought to possibly contain withheld information. These searches turned up the information that was provided to the complainant.
 - (v) Search of 12 files from its archives that were thought to possibly contain information about the £47 million pounds that was spent.
37. The public authority has explained that the searches that it had undertaken already were likely to have come close to the cost limit. It explained that it also holds around 3000 files in its archives that relate to Zimbabwe that are dated from 1979 to the present day. This information is electronically catalogued but the catalogue entries do not provide adequate detail to be able to identify the specific information that has been requested.

38. The Commissioner has been satisfied that a proportionate search has been conducted in this case and that it has been done by experienced individuals in good faith. However, he has not been convinced that the public authority can say with any certainty that it does not hold relevant recorded information in the paper archive files that it has not checked. He believes that the public authority cannot be sure that there is no relevant recorded information in those papers files. He therefore finds that on the balance of probabilities recorded information may well be held. He finds two breaches of section 1(1)(a) in wrongly confirming that further recorded information is not held when the public authority cannot be sure either way.
39. Given the above, the Commissioner believes that the correct position would have been to provide the recorded information that it had found, and explain that it did not believe it held further relevant recorded information but the only way it could be certain would be to check all the files in its archive that relate to Zimbabwe. It should therefore have applied section 12(2). For failing to apply section 12(2) within twenty working days, the public authority breached section 17(5). The Commissioner will consider the operation of section 12(1) below, alongside his consideration of section 12(2) for element [3].

Exclusion

Section 12

40. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the total cost of complying with the request would exceed the 'appropriate limit'.
41. Section 12(2) provides that a public authority can refuse a request if the cost of complying with section 1(1)(a) alone (that is the cost of confirming or denying whether the information of the description specified in the request is held) would exceed the 'appropriate limit'.
42. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that this cost limit for central government public authorities is £600. This is calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. If a public authority estimates that complying with a request would exceed 24 hours, or £600, section 12(1) provides that the request may be refused.

43. 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 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.'

44. In this case the public authority's position is that it certainly holds some information of the description specified in request [3]. However, it does not hold a complete set of information and the only way it can confirm exactly what it holds is by checking all the individual records. Its position therefore is that in order to comply with the request would take work beyond the costs limit. Its view therefore is that section 12(1) applies and no work should be required to be done. As noted above, the Commissioner has not accepted on the balance of probabilities that that no further relevant recorded information was held for elements [1] and [2]. He believes that he should consider the operation of section 12(2) in respect to these elements within this analysis.
45. The Commissioner is therefore required to consider the application of section 12 in this instance. For clarity, there is no public interest element to consider when looking at section 12. It serves merely as the costs threshold and does not provide any statement about the value of any request for information.
46. The Commissioner's investigation into the application of section 12 has three parts. The first part considers whether the requests should be aggregated or considered individually for the purposes of section 12. The second part considers whether it was reasonable for the public authority to base its estimate on obtaining information from its paper records and whether there are reasonable alternatives. If it was, then the third part would consider whether the section 12 estimate was reasonable and therefore whether the exclusion was correctly applied.

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

47. When considering whether requests can be aggregated or need to be considered individually Regulation 5 of the Statutory Instrument 2004 No. 3244 "The Freedom of Information and Data Protection

(Appropriate Limit and Fees) Regulations 2004" applies. This 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.'

48. In order to aggregate the requests for the purposes of section 12 the Commissioner must determine whether they relate to any extent, to the same or similar information. The interpretation of this part of the Fees Regulations 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]".

49. The Commissioner has considered all three requests in this case. He has concluded that they are similar to an extent as they all relate to information about the distribution of money that may have been paid to Zimbabwe. The Commissioner must then consider the time element of the test. In this case there was just a single piece of correspondence and therefore there is no doubt that it was received on the same day.

50. The Commissioner considers that the test is satisfied and the time taken to answer all parts of the request can be added together in this instance.

Were there reasonable alternatives in this case?

51. The public authority has explained that it has undertaken the searches outlined in paragraph 36 above.
52. For item [3] the request is wide as it asks for accountability of all money paid to 'Mugabe and his corrupt regime' in the 1980s. The public authority has explained that its understanding of the request is that the complainant wants all information about money paid to Zimbabwe in the 1980s and the Commissioner has considered the request in the same way. This is because the Commissioner cannot make any judgment about what happened to the money. All he can consider is whether relevant recorded information is held that may fall within the request.
53. The public authority explained that to provide a full answer it would be necessary to check all the paper files in its archive from the beginning of 1980 to the present day as the request could refer to any money that was given to the Zimbabwean government for any reason in the 1980s. The Commissioner agrees that the request is as broad as the public authority has said. There are around 3000 paper files about Zimbabwe that fall within this time period. The public authority explained that even retrieving all the files from its archive would be likely to exceed the cost limit.
54. The complainant has argued that the reliance on the costs limit was neither credible nor well considered. He explained that he felt that all the information should now have been placed on an electronic system and that searches on that system would avoid the need to check the files.
55. The Commissioner is satisfied that the files are held in paper form. He appreciates that the public authority has not instituted a fully electronic system for its historic records. He is satisfied that those that are held electronically have been checked.
56. In this case he is satisfied that the files are electronically catalogued but that the cataloguing fails to provide adequate detail to be certain that one would be able to identify all or any of the specified information that has been requested. He therefore finds that the only way to find all the specified information would be to search the 3000 files.

57. When considering this issue the Commissioner has followed guidance from the Information Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0042]. In that case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database that contained the elements of what was requested. The Tribunal concluded that none of the ways suggested would have brought the request within the cost limit. However at paragraph 15, the Tribunal also made the following more general comments on alternative methods of extraction:

“(a)...the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;

(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate... ”

58. Those circumstances were set out at paragraph 13 where it was said:

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

59. The Commissioner is satisfied that there are no obvious alternatives to obtain all the information asked for in the request besides manually checking through the records. The Commissioner is content that there are no obvious alternatives in this case that would render the estimate unreasonable. The Commissioner is therefore satisfied that it was reasonable in this case to rely on an estimate based on obtaining information through checking those records.

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

60. The issue of what constitutes a reasonable estimate was also considered in the Tribunal case of *Alasdair Roberts v the Information Commissioner* [EA/2008/0042] 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.”*

61. 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.”

62. The approach outlined above (and particularly the point about not being allowed to charge for the time spent considering exemptions or redactions) was recently reaffirmed by the Information Tribunal in *Chief Constable of South Yorkshire v Information Commissioner* [EA/2009/0029]. This reaffirmation was particularly persuasive as it constituted the only issue that the Tribunal was asked to consider in that case. However, the Commissioner acknowledges that as of the date of this notice, an appeal of the Tribunal's decision is pending at the High Court.

63. As noted above, the only way to obtain all the information that the complainant has requested would be check through the 3000 files.

64. The public authority explained that the files were not uniform in size and therefore it would be difficult to provide an estimate of how long it would take to check a single file. It explained that the files vary in size from a few pages to a few hundred pages.

65. The Commissioner has calculated the maximum amount of time that could be spent on one file for the search to fall inside the cost limit. It would need to be that 126 files could be located, retrieved and read in a single hour, or 2.1 files per minute. The Commissioner is satisfied

that the location and retrieval of an average file and the extraction of relevant information from it would take a minimum of five minutes.

66. This provides a minimum reasonable cost estimate of:

5 minutes (one file) x 3000 (files) = 150 hours.

67. The Commissioner appreciates that this estimate is an absolute minimum and it is likely that the search would take considerably longer. In any event 150 hours is considerably more than the 24 hour limit and therefore the Commissioner finds that section 12(1) can be appropriately applied to the aggregated requests in this case.

Procedural Requirements

Section 16(1)

68. 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.
69. The Commissioner is satisfied that the request was clear in its context. Therefore paragraphs 8 to 11 of the Code did not require additional assistance to be provided in this case.
70. 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.
71. The public authority has informed the Commissioner that it tried to help the complainant to narrow down the request. Indeed the result of its efforts was to receive a wider request than it began with. It explained that it tried to provide all the information that it could readily locate and has also asked the complainant to narrow down his request as well.

72. The Commissioner has considered the situation and has concluded that there was no obligation on the public authority to provide further advice and assistance in this case.
73. He therefore finds that section 16(1) has been complied with.

Section 10(1)

74. Section 10(1) provides that a public authority must comply with sections 1(1)(a) and 1(1)(b) within twenty working days. The public authority failed to provide a response within twenty working days and therefore breached section 10(1) twice.

Section 17(5)

75. Section 17(5) provides that a public authority that is relying on section 12(1) for any part of the request should issue a notice saying so in twenty working days. The public authority failed to do this for element [3] and there is therefore a further breach of section 17(5) in this case.

The Decision

76. 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 section 12(1) appropriately to the request and was entitled to aggregate the separate elements of the request for this purpose.*
 - *It complied with its obligations under section 16(1) of the Act.*
77. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *It wrongly denied that it held further recorded information for elements [1] and [2] when it could not be sure that it did not, and therefore breached section 1(1)(a).*
 - *It breached section 10(1) as it failed to issue any notice within twenty working days of receiving the request.*
 - *It breached section 17(5) as it failed to issue a section 12 notice for the information that it had not checked or for the*

information to which it was applying section 12 within twenty working days of receiving the request.

Steps Required

78. The Commissioner requires no steps to be taken.

Right of Appeal

79. 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 18th day of October 2010

Signed

**Graham Smith
Deputy Commissioner
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.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—

(a)

the day on which the public authority receives the request for information, or

(b)

if later, the day on which it receives the information referred to in section 1(3);

- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom

...

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.