

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 3 February 2011

Public Authority: Islington Council
Address: Islington Town Hall
Upper Street
London
N1 2UD

Summary

On 13 May 2008 the complainant made a request to Islington Council for details of accounts for a specific named estate for the year 2007/08. Following consultation with the Council the complainant submitted a second request concerning the Council's housing stock. The Council responded outside the 20 working day time limit disclosing the information with regards to the second request and withholding information pertaining to the first request under section 12(1) of the Act. The complainant contacted the Commissioner to complain about the Council's delay in dealing with his requests, the estimate of the costs that would be incurred in complying with the first request, the Council's failure to issue a fees notice and the form and format the disclosed information pertaining to the second request had been provided in. The Commissioner finds the public authority to be in breach of sections 10(1) and 17(1) but not sections 1(1)(a), 11(1) or 12(1) of the Act and requires the Council to take no further remedial steps.

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

First request

2. On 13 May 2008 the complainant contacted Islington Council to request the following information:

"...a full and detailed set of accounts of the income and expenditure for the Andover estate for the last year..."

3. The complainant also stated that if this information was disclosed it was provided in:

"...a format which will allow digital text / numerical manipulation."

Second request

4. The complainant, following a telephone conversation with the public authority in which the Council refused to supply the information on the grounds of the cost it would incur, wrote to the authority on 05 September 2008 to ask for a valid fees notice and to amend his request believing it now to be less costly stating:

"Would you also please amend my original request substituting 'The Andover Estate' with 'The Council's Housing Stock' and provide the information requested within an absolute minimum of 20 days or issue a refusal notice."

5. The public authority provided a response to the complainant on 06 November 2008. This response stated:

"You have since clarified your request by asking for a 'detailed set of accounts of the income and expenditure of the council's housing stock for the last year.' We are able to provide this information; it is contained in the attached copy of the council's 2007/08 Statement of Accounts. However, we are refusing to provide accounts regarding the Andover Estate, based on section 12 of the Freedom of Information Act, which relates to the fact that complying with the request would exceed the appropriate limit. For Islington, this is a cost of £450 or 2.5 days of officer time. For more information please refer to our fees and exemptions information on the website http://www.islington.gov.uk/Council/CouncilStructure/Access_to_Information/Freedomofinformation/feesandexemptions/ . In addition we attach information to explain why complying with this request will take longer than the appropriate limit."

6. The Council provided a breakdown of how a subsidy statement would need to be prepared in order to compile a set of specific accounts for the Andover Estate in more detail than had previously been provided in complying with the resubmitted request. The public authority listed the twelve parts making up the subsidy statement and stated that the task would *"take approximately two weeks of one person's time. This seems a conservative figure and is not taking into account the need to audit figures."*

7. On 16 November 2008 the complainant contacted the public authority on receipt of the refusal notice. The complainant wrote:

"Thank you for your email...and for the three pdf format documents attached to it.

It would be helpful if you could resend the documents in a form which I can manipulate digitally. The documents you have sent are in 'image' format. That is, no textual or numeric items may be selected or searched for nor can any web links etc be used."

The Investigation

Scope of the case

8. On 04 February 2009 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:

- the Council's failure to respond to the initial request within 20 working days;
- the Council's failure to respond adequately to the request for an internal review;
- the Council's refusal to provide alternative documents to those provided in pdf image format and;
- the Council's refusal under section 12 to disclose specific information relating to the Andover Estate and its refusal to provide an adequate fees notice.

9. Therefore the Commissioner will investigate:

- the public authority's failure to comply with the first request within the statutory timeframe;

- the lack of a response to the request for an internal review; (this aspect is not a statutory requirement under the Act and is addressed in the 'Other matters' section at the end of this Notice.
 - the application of section 12 to the request for *"a full and detailed set of accounts for the income and expenditure for the Andover Estate for the last year"*;
 - the level of detail provided in the disclosed information for the second request and;
 - whether the public authority should have given effect to the applicant's preference for the information to be provided in a format that could be digitally manipulated.
10. The Commissioner will not investigate the complainant's point regarding the public authority's refusal to provide a fees notice. In line with our guidance "Using the Fees Regulations" there is no obligation contained in the Act that requires a public authority to charge a fee. This is entirely discretionary and therefore the Commissioner is not required to investigate this element of the complaint.

Chronology

11. After receiving advice from the Commissioner's Office the complainant made representations to the Council in order to have his complaints initially addressed through the public authority's internal complaints procedure.
12. The Council responded on 27 February 2009 upholding its original decision regarding the format of the documents but apologised for failing to abide by the Act in relation to the time for compliance with the requests.
13. The complainant contacted the Commissioner's Office again in August 2009 following correspondence with the authority attempting to obtain information regarding how the Council was dealing with his complaint.
14. The Commissioner contacted the public authority on 08 October 2009 to ascertain what information had been disclosed to the complainant
15. The public authority responded to the Commissioner on 03 November 2009 and confirmed the last documents that were disclosed to the complainant. The Council attached the following:
- Explanation regarding the cost of estate specific accounts pdf
 - Islington Council 2007/08 Statement of Accounts pdf.
16. The public authority also stated that owing to the amount of correspondence concerned with this case and other information

requests submitted by the complainant, it was difficult to understand the sequence of events including the conclusion of the Council's internal complaints procedure.

17. The Commissioner wrote to the public authority and complainant on 12 November 2009 to clarify the case and provide an update regarding the investigation.
18. The Commissioner wrote to the complainant on 04 January 2010 to outline his initial findings and provide a further update on the case.
19. The complainant responded to the Commissioner on 13 January 2010 in answer to his initial findings.

Analysis

Substantive Procedural Matters

20. Section 12(1) (full wording in Legal Annex) of the Act states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates the cost of complying with the request would exceed the appropriate limit."

21. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees 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 eighteen hours. A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. If a public authority estimates that complying with a request would exceed eighteen hours or £450, section 12(1) provides that the request may be refused.
22. The public authority provided detailed estimates as to why it was unable to provide the information described in the first request. It estimated that providing accounts specific to the Andover Estate would take far in excess of 2.5 days work. Therefore complying with the request would also exceed the £450 cost limit.
23. The issue surrounding 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"*.

24. 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."*

25. The Commissioner will consider the description of the public authority's activities surrounding the first request and consider whether the estimate that processing the information would exceed £450 is reasonable or not.

26. The authority provided details of the costs it would incur complying with the first request stating:

"...to prepare a set of accounts particularly for the Andover Estate would take far in excess of 2.5 days work.

One of the steps to compiling a set of housing accounts is to prepare a subsidy statement for the estate.

The Council submits the Base Data Subsidy claim in August of each year. This is a fairly complex matter with several officers, preparing individual parts of the claim. After the claim is submitted Auditors have three months in which to audit the claim.

Breaking a claim down to the detail of the Andover estate would take more than 2.5 days. The claim is broken down into several parts..."

27. The Council then illustrated the following twelve points:

- Number of dwellings
- Property details
- Total value of rent roll
- Rent loss on void dwellings
- Total terminations of stock within a given time frame
- Valuation of stock
- Rental Constraint Allowance
- Bedroom details
- Non-poolable capital receipts
- Equivalent reserved part of certified value of property which ceased to be accounted for
- Average rate of interest on 01 August 2007
- Share of premiums and discounts in relation to loans.

28. The Council concluded:

"Upon completion of this subsidy claim, the information would have to be used to populate the relevant calculations that the CLG undertake to arrive at a figure for the various parts of the housing revenue account subsidy payment.

The details of the spreadsheet that would be required to be built can be obtained at:-

<http://www.communities.gov.uk/publications/housing/hrasubsidydetermination2008-09>

I would expect that the above task would take approximately two weeks of one person's time. This seems a conservative figure and is not taking into account the need to audit the figures."

29. The Commissioner accepts the explanation provided by the Council as to the actions required to breakdown the information. He considers that the time and resource implications for the public authority would be unreasonable if it was to comply with the initial request in the detail specified by the complainant. Therefore the Commissioner upholds the application of section 12(1) in relation to the first request.

30. The Commissioner notes that the Council did provide the complainant with a 'Statement of Accounts' for the Council's Housing Stock as detailed in the second request. This included a briefer version of the information initially requested and offered an adequate explanation of its reasons for doing so. The Commissioner therefore considers that there are no section 16 implications (advice and assistance) involved in this case as the complainant could not usefully refine his request.

31. The Commissioner is satisfied that this additional information provided falls within an objective reading of the second request and is not a new request resulting from the information (on the Andover Estate) that has subsequently come to light.
32. As noted in the scope of the case the complainant remained unhappy with the level of detail provided by the disclosed information in relation to the Housing Stock request (the second request). The complainant assumed that the public authority held more detailed information in addition to the 2007/08 Statement of Accounts provided. This stemmed from the breakdown the public authority provided for preparing the subsidy statement in respect of the Andover Estate that showed a greater level of detail on the accounts (referred to at paragraphs 6 and 26).
33. The Commissioner notes this level of information is held by the public authority. He then considered whether if the cost of complying with the request relating to a single estate exceeded the appropriate limit then a request relating to all housing stock should inevitably do so.
34. The public authority confirmed that the same methods described in respect of the Andover Estate for obtaining that information would be employed when compiling detailed information relating to the housing stock request. The authority provided the Commissioner with a copy of the 2007/08 Statement of Accounts in its entirety to provide evidence of the volume of information involved.
35. The Commissioner understood that although there was a greater volume of information involved there was no extraction involved in terms of a specific place.
36. The calculations supplied by the public authority along with the copy of the information that was provided to the complainant were considered by the Commissioner in line with the process detailed in paragraphs 22 and 23. These considerations enabled the Commissioner to decide whether the public authority's refusal regarding the first request on the grounds of section 12 could be applied to the second request.
37. The Commissioner decided that the explanations and calculations supplied by the public authority in relation to the cost of complying with the Andover Estate request can to a large extent be applied to the second request concerning all housing stock. Therefore the Commissioner considers that section 12(1) also applies in relation to the second request. The Commissioner notes that the public authority did provide some information in relation to the second request though it was not obliged to do so.

Procedural Requirements

38. Section 1(1) (full wording in Legal Annex) of the Act states:

“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.”

39. The public authority complied with the provisions contained within section 1(1)(a) in that it confirmed in writing that information pertaining to both requests was held by the Council. The Commissioner also finds that the public authority cannot be found to have breached section 1(1)(b) with regard to the second request as it disclosed some of the information in part and withheld the remainder under section 12(1) of the Act.

40. Section 10(1) (full wording in Legal Annex) of the Act states:

“...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.”

41. The public authority is in clear breach of section 10(1) of the Act in failing to respond to both the information requests within 20 working days.

42. Section 11(1) (full wording in legal annex) of the Act states:

“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means namely –

(a) the provision to the applicant of a copy of the information in permanent form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public authority shall so far as is reasonably practicable give effect to that preference.”

Specific electronic formats

43. Cases have arisen where a complainant requested an electronic copy in a particular format, for example in a word document or a pdf file. The Commissioner's view is that there is a distinction between the form in which a piece of information is communicated e.g. an electronic form and how the data is arranged within that form i.e. the specific software format. In short although an applicant can ask for an electronic copy they are not entitled to specify down to the next level, the specific software format.
44. With regards to the second request the complainant disputed the formatting of the provided pdf image file 'Statement of Accounts' and whether it answered his request for *"...a format which will allow digital text / numerical manipulation"*. The Commissioner takes the view that section 11(1)(a) includes the right to be provided with a copy of information in electronic form but does not entitle the applicant to specify how the data is arranged within a certain software format.

The Decision

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

Request 1

- Section 1(1)(a) – the Council informed the complainant that the information was held
- Section 12(1) – the Council correctly applied the provisions contained within this section when calculating the relevant cost and withholding the information accordingly.

Request 2

- Section 1(1)(a) – the Council informed the complainant that the information was held
- Section 1(1)(b) – the Council disclosed the information it was able to and withheld the remainder correctly applying section 12(1)
- Section 11(1) – the information disclosed by the Council was in a form that was reasonably practicable

- Section 12(1) – the Council correctly applied the provisions contained within this section when calculating the relevant cost and withholding the information accordingly.

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

Request 1

- Section 10(1) – the Council is found to be in breach of the provisions contained within this section in not offering a response to the complainant within the statutory time frame
- Section 17(1) – the Council is also found to be in breach of the provisions contained within this section by not providing a valid refusal notice within the statutory time frame.

Request 2

- Section 10(1) – the Council is found to be in clear breach of the provisions contained within this section in not offering a response to the complainant within the statutory time frame
- Section 17(1) – the Council is also found to be in breach of the provisions contained within this section by not providing a valid refusal notice within the statutory time frame.

Steps Required

46. The Commissioner requires no steps to be taken.

Other matters

47. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.

48. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a

reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

49. In relation to the complaint concerning the alleged lack of a response from the public authority to the request for an internal review the Commissioner considers the request for an internal review was submitted on 16 November 2008. This request for an internal review concerned the format of the information provided. Following intervention from the Commissioner the public authority provided a response on 27 February 2009.
50. The Commissioner considers that the internal review was therefore dealt with however he is concerned that it took over three months to be completed, despite the publication of his guidance on the matter.

Right of Appeal

51. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal
Information Rights
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 3rd day of February 2011

Signed

**Gerrard Tracey
Principal Policy Adviser**

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Section 1(2) provides that -

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

Section 1(3) provides that –

"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 1(4) provides that –

"The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is 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.”

Section 10(3) provides that –

“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 10(4) provides that –

“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.”

Section 10(5) provides that –
“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –
“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 Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Means by which communication can be made

Section 11(1) provides that –
“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference.”

Section 11(2) provides that –
“In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so”

Section 11(3) provides that –

“Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination

Section 11(4) provides that –

“Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“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.”

Section 12(3) provides that –

“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.”

Section 12(4) provides that –

“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.”

Section 12(5) – provides that

“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 estimated.

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(2) states –

"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."

Section 17(3) provides that -

"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."

Section 17(4) provides that -

"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.

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that –

"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."

Section 17(7) provides that –

"A notice under section (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."