

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 14 March 2011**

**Public Authority:** Buckinghamshire County Council  
**Address:** County Hall  
Walton Street  
Aylesbury  
Buckinghamshire  
HP20 1UA

### Summary

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The complainant made a series of requests between 1 October 2009 and 20 January 2010 for information about 11+ testing. This notice relates specifically to his requests dated 29 October 2009 and 20 January 2010. The public authority provided the requested information, but the complainant has asked the Commissioner to consider the format in which some of the information was supplied and stated that the remaining information has not been fully provided. The Commissioner finds that the public authority supplied all of the disputed information and does not require any steps to be taken.

### The Commissioner's Role

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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

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#### Request 1 - 29 October 2009

2. On 29 October 2009 the complainant submitted the following request:

*"I think it best if you just provide me with all of the headers in this DB table – please can you do that?"*

*Also*

*If there are links to other tables from this table, would you also explain what these tables are as that data may be useful also.*

*So I confirm that if data exists in relation to children that have taken (or eligible for) the 11+, beyond that contained in the table already requested above, I'd like to know what that data is (Table/Headers/Data description)."*

In a further email to the Council dated 30 October 2009, the Complainant further clarified his request as follows:

*"I require all the headers of this DB table(s) from which the 11+ results data was taken as well as fields from any other tables that are linked to these records in the DB that form a view of the child in question. This is not restricted to what would strictly be called 11+ results data....."*

3. Buckinghamshire County Council (the Council) provided a response to the complainant on 25 November 2009 in which it provided the information requested in the form of annotated screenshots taken from every screen of two databases, the 11+ admissions database and the 11+ appeals database. The screenshots were annotated to explain every field.

### **Request 2 – 20 January 2010**

4. On 20 January 2010 the complainant submitted the following request:

*"Please provide the following 11+ information:*

- 1) *School*
- 2) *VRTS Score*
- 3) *Attitude to Work*
- 4) *Academic Recommendation*
- 5) *1st Test Score*
- 6) *2nd Test Score*
- 7) *Both Test Dates*
- 8) *Plus, if tested by us other than at a school, the test venue and time for each test*

*9) Plus, if there has been an application for test modifications, there is a more detail just to record the application process and outcome  
10) Appeal data – Success/Fail*

*For 2007, 2008, 2009.*

*Also, it is not clear to me what all the headers of the 2 Databases actually are and what is available to me. (I did not deduce that ATT and HTR correspond to the headers you described) Since there may well be others, can you simply list all the headers please?"*

5. The Complainant sent a further email to the Council on 7 February 2010 in which he requested items 1-10 were provided to him in an Excel format.
6. The Council wrote to the complainant on 8 March 2010 to inform him that it was processing his request and apologising for the delay. In this email, the Council also informed the complainant that it had already provided him with all of the information regarding the database headers in the form of annotated screen shots. The Council offered to explain further any of the fields or abbreviations which the complainant did not understand.
7. In an email dated 17 March 2010, the Council provided the complainant with the information he requested on 20 January 2010. The information was provided in the form of a PDF document of an Excel spreadsheet containing 184 pages.
8. The complainant requested an internal review of the public authority's handling of both of the above requests on 18 March 2010.
9. The Council did not respond to the internal review request. The complainant sent follow up emails to the Council dated 30 March 2010, 6 April 2010 and 4 May 2010 before contacting the Commissioner.
10. The Commissioner wrote to the Council on 7 July 2010 and again on 20 July 2010 asking that it carry out the requested internal review.
11. On 13 August 2010 the public authority responded with the details of the result of the internal review it had carried out. The Council stated that it had provided all of the information requested.

## The Investigation

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### Scope of the case

12. On 18 August 2010 the complainant contacted the Commissioner again 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 had not provided him with everything he had requested (Request 1)
  - The Council's failure to provide the 11+ details in the form of a useable Excel spreadsheet, rather than a PDF version of an Excel spreadsheet (Request 2)
  - The delay in carrying out the internal review in both cases

### Chronology

13. In a letter dated 18 August 2010 the Commissioner informed the Council about the complaint and asked that it provide him with any supporting arguments in relation to its handling of the two requests above.
14. The Council responded to the Commissioner on 31 August 2010 stating that it had provided the complainant with all of the information he had requested.

### Analysis

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#### Request 1 – 29 October 2009

#### Procedural Requirements

##### Section 1

15. In situations where there is a dispute between the complainant and a public authority regarding the amount of information which is held, the Commissioner will make an assessment based on the balance of probabilities.
16. Section 1 of the Act states that any person making a request for information is entitled to be informed in writing whether the

information is held and, if this is the case, to have the information communicated to them.

17. The Commissioner has considered the public authority's handling of the request with regard to the section 1 requirements of the Act. In doing so he has viewed the information and representations provided to him by the public authority and complainant. The Commissioner is aware that the subject matter in question in this case has been subject of similar requests; for example in case reference number FS50160381, concerned a request dated 5 January 2007, in which the Commissioner issued a Decision Notice.

*Is further information held by the Council?*

18. In the Commissioner's view, the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities.
19. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

*"...we must consider whether the Information Commissioner's decision that the Environment Agency did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..."*

because

*"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"*

20. In deciding where the balance lies, the Commissioner will usually consider, among other things, any reasons offered by the public authority to explain why further information is not held.

*Explanations offered by the Council*

21. The Council stated that it had tried to clarify with the Complainant what he meant by the terms "Field Headers" and "Database Headers" but unfortunately he did not clarify the information he was seeking, instead he asked the Council to create a list of the headers contained within the two databases it had provided to him.

22. Furthermore, at the time of the initial request, the complainant did not express a preference for the means by which the information should be communicated to him. The Council took the view that due to the size of the files in question that the most practical way of providing the screenshots was via hard copy. The complainant has since been provided with these screen shots electronically.
23. The Council provided the following information to the complainant:
  - Annotated screenshots from the complete 11+ admissions database
  - Annotated screenshots from the complete 11+ appeals database
24. The Council has confirmed to the Commissioner that it has provided the complainant with screenshots to show everything it records in relation to the subject matter of this request, to provide the complainant with a list of these headers would be an improper use of its limited resources given that the information had already been provided to enable the complainant to produce his own list. The Council has re-iterated that it is happy to provide further explanation for any fields within these databases which the complainant does not understand.

*The Commissioner's position*

25. From the explanations provided to him by the public authority in response to his detailed enquiries, the Commissioner is of the view that the public authority has carried out searches of the appropriate locations in order to locate and retrieve the relevant information. The Commissioner holds that it is not reasonable to suggest that other information pertaining to the request may be held by the public authority elsewhere.
26. Moreover the Commissioner has considered the information provided to him by the public authority within the course of his investigation and he has not found any evidence within the correspondence, to suggest that further information within the scope of the request exists. Therefore, in the absence of any evidence to the contrary, he is satisfied that the public authority has provided all the information it holds pertaining to the request. The public authority are not required to generate a list of the headers as the information is not held in that format, screenshots have been provided showing all of the fields of data recorded by the Council which enables the complainant to generate his own list.

## **Request 2 – 20 January 2010**

### **Procedural Requirements**

#### **Section 10 Matters**

27. Section 10(1) 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 date of receipt.”

28. In this case the public authority failed to respond to the complainant within the statutory time frame as is evidenced in the sequence of correspondence.

#### **Section 10 conclusions**

29. The Commissioner finds the public authority to be in breach of the requirements set out in section 10(1) of the Act in failing to respond to the information request within 20 working days.

#### **Section 11 Matters**

30. Section 11(1) 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 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*

31. Cases have arisen leading to decision notices relevant to this case, such as that in FS50094281 Bath and North East Somerset Council

[http://www.ico.gov.uk/upload/documents/decisionnotices/2007/decision\\_notice\\_fs50094281.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2007/decision_notice_fs50094281.pdf)

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.

32. The Commissioner notes that in this case, similar to FS50094281, the complainant did not stipulate the information be provided to him in a specific form at the time of submitting the request on 20 January 2010. His initial request stated "Please provide the following 11+ information ..." and then sought the information in a specific format later on 7 February 2010.

### **Section 11 conclusions**

33. Notwithstanding the fact the complainant is not entitled to ask for specific software formats under section 11, the Commissioner notes that the complainant did not specify a form he wished the information be provided to him in at the time of making the request. Therefore the Commissioner finds that the public authority complied with the Act in providing the disclosed information in electronic form and refusing to alter at a later date its format within that form.
34. The complainant appears to have accepted the information provided in the form of the PDF version of the excel spreadsheet, however he remained dissatisfied with the fact that the information was provided as PDF document rather than a useable Excel spreadsheet. His request of 20 January 2010 made no reference to the format in which the information was to be provided, his further email of the 7 February 2010 stated "I would like the information in Excel format" but did not specify that he required the information in a useable form. 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

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35. 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 1(1)(b) – the Council provided the requested information

### **Request 2**

Section 1(1)(a) – the Council informed the complainant that the information was held

Section 1(1)(b) – the Council provided the requested information

Section 11(1) – the information disclosed by the Council was in a form that was reasonably practicable

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

### **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

## Steps Required

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36. The Commissioner requires no steps to be taken.

## Other matters

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37. 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. 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. The Commissioner is concerned that in this case, it took over 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

## Right of Appeal

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38. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 14<sup>th</sup> day of March 2011**

**Signed .....**

**Andrew White  
Group Manager – Complaints Resolution  
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.”