

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 27 June 2011

**Public Authority:** The University of Cambridge  
**Address:** University Offices  
The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

### Summary

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The complainant submitted a request for information which required the University of Cambridge to conduct a random sampling exercise of certain specified records. The university refused the request on the grounds that the Freedom of Information Act provides a right of access to information, it does not entitle an applicant to require a public authority to perform specified tasks. The Commissioner finds that the request was correctly refused, on the grounds that it was not a valid request for information under section 8(1)(c) of the Act. He does not require any action 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.

## Background

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2. The complainant had previously submitted a request for information to the public authority which had been refused on the grounds of costs for compliance, under section 12 of the Act. The matter has been considered by the Commissioner in case reference FS50321035<sup>1</sup>, which decision upheld the university's refusal. The request described below was submitted in an attempt to refine his previous request to a point where it could be addressed by the public authority.

## The Request

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3. On 22 March 2010, the complainant sent an email to the public authority, requesting:

*"You have previously indicated that it takes on average ~2 minutes 45 seconds to retrieve the file of an individual dismissed between 1 January 2004 and December 2008 and extract the information I require. Therefore, please select a random sample of ~350 such files and provide the following information in respect of those files, broken down by calendar year and staff category (unestablished, assistant, academic-related, academic, etc):*

*1. How many appeals against dismissal have been heard by the University (or by some body on behalf of the University)? How many appeals against dismissal have been heard under the University's current Statute U?*

*2. How many of these appeals have succeeded?*

*3. How many post-dismissal compensation settlements have been reached?*

*4. How many of these settlements were subject to confidentiality agreements?*

*In addition, please provide the earliest and latest dates of dismissal in the files selected for the random sample (and the total number of files sampled). Please also provide details of the random sampling procedure used to select the files."*

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<sup>1</sup> Available online at

[http://www.ico.gov.uk/~/\\_media/documents/decisionnotices/2011/fs\\_50321035.ashx](http://www.ico.gov.uk/~/_media/documents/decisionnotices/2011/fs_50321035.ashx)

4. The public authority replied on 13 April 2010 refusing the request, stating:

*"You requested the University to 'select a random sample ' of personnel files with a view to providing information about appeals against dismissal. The FOIA provides a general right of access to information held in recorded form by public authorities. It does not entitle a member of the public to require a public authority to perform a random sampling exercise or to apply other standard research techniques on manual records. Accordingly, your request will not be processed further. "*

5. The complainant requested an internal review on 15 April 2010, arguing that the methodology he proposed in his request described the information he was requesting, as required by section 8(1)(c) of the Act, and therefore it was a valid request for information.
6. The public authority wrote to the complainant on 6 May 2010, informing him that its internal review had found that the ruling given by the public authority (and quoted, above) was correct and therefore upholding the refusal of the request.

## **The Investigation**

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### **Scope of the case**

7. On 19 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- He believes that his request is a valid freedom of information (FOI) request because it satisfies all the conditions required at section 8 of the Act.
  - The public authority failed to provide advice and assistance to him under the duty provided at section 16 of the Act.
8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## Chronology

9. The Commissioner wrote to the complainant on 14 July 2010, indicating his initial assessment that the request, as set-out, did not 'describe' the information requested to any extent, other than that which had previously been refused on the grounds of cost, and therefore failed to fulfil the requirements of section 8(1)(c) of the Act.
10. The Commissioner was, at this time, dealing with four complaints from the complainant about the same public authority, which were all concerned with information of a broadly similar nature. He was therefore corresponding with the public authority on this, and other topics and its responses dealt with matters other than the specific one under consideration here. The chronology of that correspondence is therefore not described in detail in this notice.
11. The public authority provided information which assisted the Commissioner's understanding of its refusal of the previous, related, request under section 12 of the Act. It was argued that the information was held in manual files over diverse locations and the identifying labels on the files did not permit searches under the parameters specified in the complainant's previous request. Compliance with his request would have necessitated a manual search of all the personnel files held by the public authority, which were substantial. The Commissioner put that to the complainant on 21 July 2010, observing that even if the refined request were to be considered a valid request for information, the methodology he proposed would not necessarily have enabled the public authority to provide him with the information he had requested.
12. The complainant replied on 3 August. He continued to argue that his request was a valid FOI request and met the requirements of section 8(1)(c) of the Act.

## Analysis

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### Substantive Procedural Matters

#### Section 8

**Section 8(1)** provides that –

*'In this Act any reference to a 'request for information' is a reference to such a request which –*

- (a) *is in writing,*
- (b) *states the name of the applicant and an address for correspondence, and*
- (c) *describes the information requested.'*

13. It is not disputed that the request fulfils the necessary elements at section 8(1)(a) and 8(1)(b).

14. The public authority has expressed its view that the Act provides a general right of access to information held, but does not provide a general right for an applicant to require a public authority to perform specific tasks. The matter for the Commissioner is therefore whether section 8(1)(c) should, in the circumstances of this case, be interpreted in such a way that an applicant may 'describe' the information requested by indicating that the requested information is the output from a specified process or task, which is the complainant's view.

15. It has been established that the right of access under section 1 of the Act is a right to **information** which is **held** by a public authority in its records. This has been confirmed by the Information Tribunal, for example in the case of *Johnson and ICO and Ministry of Justice* (EA/2006/0085)<sup>2</sup> which makes clear, at paragraph 42, that:

*"[...] the Act is concerned with access to information, rather than access to the documents containing the information. Pursuant to section 84, "information" means "information recorded in any form". The focus of the Act is on the content of the information [...]. Therefore, when considering whether information is "held", the focus must be on the information itself, rather than on where or how it is recorded."*

16. The contested element of the complainant's request is that which begins

*"please select a random sample of ~350 such files and provide the following information..."*

17. Prior to the section of the complainant's request quoted at paragraph 3, above, the complainant had made the following reference to a 'random sampling exercise':

*"Whilst I would prefer to have the authoritative figures on appeals against dismissals in this period, figures which indicated the prevalence of such appeals, such as those provided by a random*

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<sup>2</sup> Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i90/Johnson.pdf>

*sampling exercise, would be a useful alternative. Lest this request be dismissed as frivolous, I observe that random sampling is a standard research technique for determining the prevalence of something in a population where it is not feasible to survey the entire population. However, since despite my repeated requests you have failed to provide details of how the files in question are indexed, I am afraid I do not have sufficient information to specify a suitable random sampling procedure in this request. Should you provide me with sufficient information to construct such a procedure I will be happy to do so; otherwise I am sure there are numerous individuals employed by the University capable of devising a suitable procedure."*

18. It is therefore apparent that the 'random sampling exercise' envisaged by the complainant requires some form of formal methodology. The complainant describes the random sampling exercise as a 'standard research technique', and notes that this would require the devising of a suitable procedure. It is therefore something more than just the requirement for a staff member to pluck files at random from the storage area.
19. Given the evident focus of the Act on 'information' the Commissioner considers that it would be inconsistent for the requirement at section 8(1)(c) to be for a description of anything other than the actual information requested. He observes that the extract from the complainant's request quoted at paragraph 3, above, refers to a random sample of **files** (ie 'documents' rather than 'information') and it is clear from the second part of the extract that the 'random sample' is itself not the information requested, but the complainant is interested in information which may be found **within** that random sample. Therefore the descriptor 'random sample' does not describe the information which the complainant wishes to obtain.
20. The Commissioner contends that the correct interpretation of 'describes' in section 8(1)(c) must be for a description which enables a public authority to understand the nature of the information requested, and enable it to establish whether it holds such information in its records. If the description is unclear a public authority may (under section 1(3) of the Act) request clarification from the applicant and there will be a corresponding duty (under section 16(1) of the Act) to provide advice and assistance to an applicant to enable them to provide suitable clarification. Once the information has been identified from its description, it is for the public authority to determine the way it is to be located and extracted from its records.
21. The Commissioner is supported in this view by consideration of the code of practice issued by the Secretary of State for Constitutional Affairs in

compliance with section 45 of the Act (the section 45 Code)<sup>3</sup>, which provides guidance on matters of good practice in responding to requests for information. The section 45 Code states, at paragraphs 8-9 in Part II:

*"8. A request for information must adequately specify and describe the information sought by the applicant. Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.*

*9. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought [...]"*

and, at paragraph 12:

*"12. If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification."*

22. In summary, the description should enable the public authority to identify the information and locate it in its records.
23. The Commissioner observes that the request is substantially similar to a previous request from the complainant (submitted 13 December 2009) which was refused on the grounds of cost, which was for:

*"For all categories of staff (unestablished, assistant, academic-related, academic, etc), and since 1 January 2004, please supply the answers to the following questions:*

*1. How many appeals against dismissal have been heard by the University (or by some body on behalf of the University)?*

*2. How many of these appeals have succeeded?*

*3. How many post-dismissal compensation settlements have been reached?*

*4. How many of these settlements were subject to confidentiality agreements?"*

24. The essential difference between the information described, above, and that in the current request (apart from addition of the reference to the

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<sup>3</sup> Available online at <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

university's 'statute U') is that the 22 March 2010 request is the 13 December 2009 request, modified by the addition of the following:

*"[...] please select a random sample of ~350 such files and provide the following information in respect of those files, broken down by calendar year and staff category (unestablished, assistant, academic-related, academic, etc):"*

25. From this the Commissioner observes that, to the extent that the above is a description, it appears to him to be a description of a process, not of information which is requested. As a description of a process or task, it may also reasonably be classed as an 'instruction'. The Commissioner agrees with the university that the requirement is for an applicant to describe the information of interest, not to instruct the public authority to do something. Section 1(1) of the Act provides a right of access to information, not a right to instruct a public authority to perform tasks. What then matters is whether the 'instruction' may yet be considered to be a description of the information requested in an unconventional sense and, if so, whether the public authority must therefore use the request, as presented, and provide a response under the Act.
26. Had the complainant, for example, 'described' the information as "take all the files from A to F, and provide [the information requested]" then that could otherwise be written as, for example:

*"For all staff with surnames beginning with A to F, inclusive, how many appeals against dismissal...[etc]"*
27. Clearly, that would be a request which describes the information in a way which enables the public authority to ascertain the nature of the information requested and establish whether it holds such information in its records. As such, it complies with section 8(1)(c). To the extent that it requires the public authority to undertake a process in order to provide the information (eg searches of files beginning with A to F) that process is one of location and extraction of the described information and its means of execution is left to the public authority.
28. The Commissioner has been unable to re-phrase the quoted extract of the complainant's 22 March 2010 request in such terms, without retaining the requirement for a random sampling of the relevant record system. The requirement of section 8(1)(c) is for a description of the information requested, not a description of the process by which the information is to be located.
29. The complainant acknowledges that his 22 March 2010 request was an attempt to refine his 13 December 2009 request to a point which the



public authority could respond to within the cost limit. He argues, however, that this request is different to his previous request because it is asking for different information. He suggests that the likely outcome of his request would be information disclosed in relation to a proportion of the total number of appeals, the proportion being related to the proportion of the files sampled, against the total number of files held. From this he believes he could construct an estimate of the likely total number of appeals based on an extrapolation of the information disclosed to the total number of files held.

30. In this way, he argues, the information requested in the current request will provide him with what he describes as an “*estimate (in the statistical sense)*” of the number of appeals, whereas the previous request, if answered, would have provided him with the *actual* number of appeals. As the information disclosed would be different, therefore the description of the information requested must be different, therefore the modification of the request must constitute a description.
31. The Commissioner considers this argument inconclusive. Any response which could be generated in the scenario envisaged by the complainant would not be an estimate, it would be a number, which could itself then be used in the calculation of an estimate. As things stand, neither the complainant nor the public authority knows the number of appeals which might have been revealed in response to the original request. Therefore, it is impossible to know whether any response to the second request would have produced a number which was different to that required by the first. It is possible that a random sampling might have turned up no files containing information on appeals against dismissal, in which case the estimate for the total number of appeals the complainant might have been able to calculate would also be ‘zero’. Similarly, if the total number of appeals against dismissals were fewer than 350, it is also possible that the random sampling could locate all these cases, in which case any estimate the complainant could derive would similarly be inconclusive.
32. The Commissioner does not find that the requirement to conduct a random sampling exercise constitutes a description of the information requested, and therefore he does not accept the complainant’s argument that this is a valid request under section 8(1)(c) of the Act.

## **Procedural Requirements**

### **Section 1**

33. The Commissioner notes that the university had previously issued a refusal of the complainant’s 13 December 2009 request on the grounds of the cost for compliance under section 12 of the Act. In the request

which is the subject of this complaint, the description of the information requested in his 13 December 2009 request was re-stated, immediately following his description of the 'random sampling exercise' he required.

34. The current request was not refused on the grounds of cost, as previously, but was refused on the basis that the Act does not entitle an applicant to require a public authority to perform specified tasks. For that reason, the request as submitted was not a valid request for information.
35. While the public authority did not specifically cite the provisions of section 8 of the Act, the matter has been considered, above, and the Commissioner has concluded that the refinement of the request as set out by the complainant does not constitute a 'description' of the requested information. He concludes therefore that the remainder of the request also falls at this point, because subsequent requests for information based on that random sample are meaningless if there is no random sample on which to extract the requested information.
36. However, as stated at paragraph 20-21 above, if a public authority is unable to identify and locate the requested information it is expected, under section 1(3) of the Act, to seek further clarification from the applicant in order to identify and locate the information requested. The Information Tribunal has linked the requirement for clarification from the complainant to the duty to provide advice and assistance under section 16 of the Act.
37. The complainant argues that the university could have explained to him (under its duty to provide advice and assistance) how its files were organised, in order that he could better frame his request. He draws the Commissioner's attention to the wording in his request, quoted at paragraph 17, above:

*"Should you provide me with sufficient information to construct such a procedure I will be happy to do so"*

38. In his request for internal review, the complainant suggests that the 'random sampling exercise' might be replaced by "any collection of ~350 random files of individuals dismissed from the university [...]". This might be thought of as permitting a staff member to pluck files at random, but for the requirement for the '~350 files' to be of 'individuals dismissed from the university'. The complainant's request is based on a misreading of the response to the previous request, examined in case reference FS50321035. His current request states:

*"You have previously indicated that it takes on average ~2 minutes 45 seconds to retrieve the file of an individual dismissed*

*between 1 January 2004 and December 2008 and extract the information I require."*

39. However the university's response in FS50321035 actually makes clear that the 2 minutes 45 seconds is the average time taken to search each file for any requested information once it has been retrieved, not the time taken to retrieve the file and extract the requested information. As was established in the Commissioner's decision notice in that case, the files do not contain external markings which enable them to be identified as files for dismissed individuals. The search of the file would therefore also be a search for information to identify the file as relating to a dismissed individual.
40. The Commissioner returns to his conclusion at paragraph 32, above, that a random sampling exercise does not describe the requested information and therefore does not constitute a valid request. He concludes that it follows that any such random sampling methodology which the complainant could provide would still not transform the request into a valid one, because the request would still retain the requirement that the university perform a task, rather than disclose information it holds. The requirement at section 1(3) of the Act is for a public authority to request clarification if it cannot isolate an objective reading of the request, sufficiently clearly to be able to respond to it. In this case, it is clear to the Commissioner that the university had no difficulty understanding the request.
41. Nevertheless, the Commissioner has gone on to consider whether it would be reasonable, in the circumstances, to expect the university to provide advice and assistance under its general obligations at section 16 of the Act.

## **Section 16**

**Section 16(1)** provides that -

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

42. Noting that in this case, it has been established that the 'refined' element of complainant's request does not constitute a request for the purposes of section 8 of the Act, there can be no consequent duty to provide advice and assistance about that specific 'request'. Nevertheless it should be clear to a public authority in such circumstances that the complainant *intended* or, in the terms expressed in the Act, 'proposed' to submit a

request. The duty to provide advice and assistance would therefore still be engaged, to the extent that it would be reasonable to expect the public authority to do so.

43. The Commissioner is satisfied that there is no duty to provide advice and assistance to the complainant in respect of his random sampling exercise. However it is apparent that at the time he submitted this request, the complainant was not clear how the university's personnel files were stored and identified, and that he was therefore unable either to frame a request which the university could respond to within the cost limit, or to understand clearly why that would not be possible.
44. The complainant's previous (and substantially similar) request, had been refused on the grounds of cost under section 12 of the Act. The public authority had concluded in that case that it could not offer any advice and assistance which would enable him to refine his request. The matter is addressed in the Commissioner's decision notice for that complaint, reference FS50321035.
45. In that case the Commissioner learned that the files were stored broadly in alphabetical order, over a number of physical locations, and that the files contained a number of external identifiers but that none of these external identifiers assisted the location of files containing the requested information, namely those staff members who had reached post-dismissal settlements with the university. It remains possible that this knowledge, had it been explained to him at the time, might have helped the complainant more fully to understand the nature of the university's difficulties with his request, and the complainant himself argues that the university *"could have told me how its files were organised so that I could better frame my request"*.
46. However, the requirement under section 16 is for the provision of advice and assistance *"so far as it would be reasonable to expect the authority to do so"* and, aside from setting out the detailed methodology for a random sampling exercise, the complainant has not proposed ways in which advice and assistance might have enabled him to better frame the request under consideration in this case. Given the university's view that such a random-sampling approach was invalid, the Commissioner accepts that it might fairly conclude that assistance in modifying this request would not be reasonable.
47. For the purposes of this complaint, the Commissioner is not persuaded that the Act necessarily obliges the university to consider its position in respect of section 16 afresh. Having already internally reviewed its previous position in case reference FS50321035, it should be entitled to regard its view on the matter as 'settled'.

48. The Commissioner concludes therefore that it would not be reasonable to expect the public authority to provide further advice and assistance as to how the complainant might frame a request which did not rely on the random sampling exercise, because it has previously explained that it has considered that, and been unable to offer any such assistance. The complainant argues that, had the university explained to him how the files were stored and identified, this would have assisted him. While the Commissioner agrees that the university might have helpfully provided more detail in order to allow the complainant to better understand why his request could not be met, this is not the same as providing advice and assistance to permit him to 'clarify the nature of the information sought' and, indeed, it is clear that the university was well aware of what information the complainant sought. In the circumstances, he does not find any breach of section 16.

## **The Decision**

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

- The request was correctly refused as invalid.

## **Steps Required**

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The Commissioner requires no steps to be taken.

## Right of Appeal

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50. 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)

51. 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.

52. 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 27<sup>th</sup> day of June 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 –

- (c) reasonably requires further information in order to identify and locate the information requested, and
- (d) 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”.

**Request for Information**

**Section 8(1) provides that –**

“In this Act any reference to a “request for information” is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.”

**Section 8(2) provides that –**

“For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference.”