

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 September 2011

Public Authority: Leeds City Council
Address: Legal, Licensing and Registration
Civic Hall
Leeds
LS1 1UR

Summary

The complainant requested, under the Freedom of Information Act 2000 (the Act), all the information it held on its internet and intranet IT systems for two years in a specified format and all other information held electronically about a set of meetings.

The Council considered that the request was in its context vexatious by virtue of section 14(1) of the Act. The complainant referred this case to the Commissioner.

The Council subsequently withdrew its reliance on the exclusion. It came to the view that the work required to provide the information for the first request exceeded the costs limit and applied section 12(1). It provided the information that it held for the second request.

The Commissioner finds that the Council was entitled to rely on section 12(1) in relation to the first request. He also upholds the Council's position in relation to the second request in that no further information is held.

He also finds a number of procedural breaches, but requires no remedial steps to be taken.

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. The complainant's company took the Council to the High Court about the nature of its derogated powers and won substantively.
3. During the course of that litigation, the Council realised that it did not have a complete record of what happened in its AGM meetings in 2003 and 2004. It therefore tried to create those records from the components that it did have. The Commissioner has considered this information in case reference FS50298572¹ and can confirm that the same information was provided to the complainant during the course of the Commissioner's investigation as part of the information held for the second request.
4. As part of that case, the complainant believes that disclosure may have been inaccurate and consequently made the following requests.

The Request

5. On 4 May 2010 the complainant requested the following information under the Act:

'[1] I wish to be supplied with a copy of all the electronic information contained on the Council's intranet/internet I.T. system(s) relating to the calendar years 2003 and 2004. I am led to believe that the I.T. system containing this information is still 'live' in the Council. For the avoidance of doubt I am seeking a 'mirror' or 'ghost' of the media on which the data is stored.

'[2] I also wish to be supplied with all information held in electronic form by the Council relating to the Constitutional Proposals Committee meetings in 2003, the Business Committee meetings in 2003-4, and the Annual Council Meetings in 2003 and 2004. This will include the originals and drafts of all agendas, reports and minutes together with all emails, correspondence and other background papers relating to the meetings specified.'

6. On 27 May 2010 the Council issued its response. It explained that it believed that the request was vexatious and that it was excluded from answering the request by virtue of section 14(1). It explained that it believed that this matter was discussed and resolved by the court. It

¹ The Decision Notice for the connected case can be found here:
http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50298572.ashx

said that it did not believe that there were genuine reasons for the request and that it lacked serious purpose or value. It explained that it regarded the request as being obsessive in its context. It confirmed that it viewed the requests as plainly and obviously vexatious and explained in light of its view that there would be no purpose in conducting an internal review and provided the Commissioner's details so the complainant could appeal directly to him, should he so choose.

The Investigation

Scope of the case

7. On 30 July 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:
 - The request was not characterised correctly as being vexatious;
 - This was the first request he had made subsequent to the litigation;
 - The Council failed to evidence that it supplied the right information in the connected judicial review proceedings and this was the reason for the information request;
 - That this was not a case of a loser in Court pursuing the case by other means – in this case he won; and
 - That there is real and genuine concern about the Council's conduct in this case and the information was required to consider this.
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. In particular, the Commissioner cannot make any judgment about what was disclosed in the court case.
9. In addition, it is noted above that the complainant asked the Commissioner to consider section 77 of the Act. This is Part VIII of the Act and cannot be considered in this Notice. The Commissioner will respond to the complainant's allegations in a separate letter.

Chronology

10. On 30 July 2010 the Commissioner wrote to the complainant and the Council to confirm that he had received an eligible complaint.

11. The Commissioner also explained to the complainant that he was currently considering a connected case about similar issues and that he would conclude that case first (the case with reference FS50298572). The decision was promulgated on 2 December 2010. It found that the connected request was incorrectly characterised as being vexatious and asked the Council to reprocess the request. The Council then disclosed the disputed information in that case.
12. On 7 December 2010 the Commissioner made detailed enquiries about the operation of section 14(1) in this case. He explained to the Council that it could either answer these enquiries or withdraw its reliance on section 14(1) and provide the complainant with the requested information.
13. In January and February 2011 the Council explained that it may be prepared to reconsider the requests, but asked the complainant whether he would narrow down what was requested. The complainant confirmed that he would not, but explained that he feared that the Council had misread his request and it was narrower than it thought.
14. On 4 March 2011 the Council explained to the Commissioner that in light of the passage of time and the verdict in FS50298572 it was prepared to provide the complainant with the information and that it withdrew its reliance on section 14(1).
15. On 24 March 2011 the Council purported to provide the complainant with all of the information for request **[2]** on a CD ('CD one'). It also provided the Commissioner with a copy of the CD. For request **[1]**, it explained that it did not hold the requested information.
16. On 28 March 2011 the Commissioner spoke to the complainant on the telephone. The complainant explained that he believed that information was held for request **[1]** and that the information provided for request **[2]** was incomplete.
17. The Commissioner made his own enquiries regarding the systems operated by the Council in order to understand them more clearly.
18. On 20 April 2011 the Commissioner made detailed enquiries to the Council about how it held information. He received a response on 20 May 2011. The Council explained that it agreed that it held further information for request **[2]** and provided it to the complainant on another CD ('CD two'). The Commissioner also received a copy of it.
19. The Commissioner wrote to the complainant on 23 May 2011. He explained that his preliminary view was that the complainant had now received the information that he was entitled to and asked whether he wanted this case to continue.

20. On the next day, the complainant presented further evidence that appeared to indicate that further relevant recorded information was held for request [1]. He also explained that he remained dissatisfied with the information provided for request [2].
21. On the same day, the Commissioner wrote to the Council seeking its comments on the complainant's allegations and that it explain why the information it held could not be provided in the requested form. He received a partial response on 9 June 2011.
22. On 24 June 2011 the Commissioner was required to make further enquiries about the Council's position. He received a response on 22 July 2011. The Council explained that it now believed that section 12(1) could be appropriately applied to the first request.
23. On 27 July 2011 the Commissioner asked further enquiries about the operation of section 12(1). On 15 August 2011 he received a response.
24. On the next day, he asked the Council to provide evidence that it had referred the external link to its old website to the complainant and it showed that it had done so on 10 August 2011.

Analysis

Substantive Procedural Matters

25. In summary the position of the Council is now as follows:
 - For the intranet information for request one, it is not able to provide the information that has been requested within the costs limits [section 12(1)]; and
 - For the internet information for request one, it does not hold information about what was on its internet systems. However, it can direct the complainant to a third party website to provide what was on it at a set time;
 - For request two – it has provided all the relevant recorded information it holds [section 1(1)].
26. The Commissioner will consider its position in reverse order:

Is further relevant recorded information held for request two?

27. Section 1² 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 recorded information of the description specified in the request and (b) if that is the case to have that information communicated to him. It follows that it is necessary for information to be held in recorded form by the Council at the date of the request for it to be subject to the Act. The date of the request in this case is agreed to be 4 May 2010.
28. As noted above, during the course of the Commissioner's investigation the Council provided the complainant and the Commissioner with two CDs worth of information.
29. The complainant continues to believe that these two CDs may not contain all the relevant recorded information that was requested. The Council has explained that it has undertaken appropriate and comprehensive searches that lead it to believe that it has now provided everything. The Commissioner needs to determine this issue.
30. The standard of proof that the Commissioner uses to determine whether relevant recorded information is held was confirmed by the Tribunal in *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072] ('Bromley'). It said that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
31. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in *Bromley*. 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 further recorded information is not held.
32. The Commissioner will therefore consider the arguments of both sides and the factors specified in *Bromley*.
33. The Commissioner considers that the request is unambiguous in this case. The request asks '*all information held in electronic form by the Council relating to the Constitutional Proposals Committee meetings in 2003, the Business Committee meetings in 2003-4, and the Annual*

² All sections of the Act that are cited in this Notice can be found in full in an attached legal annex.

Council Meetings in 2003 and 2004' and there is no doubt what this request is asking for.

34. It follows that the request only asks for information in electronic form and specifies exhaustively the meetings that are of interest.
35. The Council have explained that it has conducted the following searches on its understanding of the request:
 - it searched the Democratic Services Information System (DSIS) that was the electronic system filing system introduced in 2006, which was populated back to April 2004 only;
 - it searched its shared computer drive – this was where the information was routinely stored by the Council;
 - it searched its paper records (even though the request only specified electronic records) to check that there was no residual information it held that it had failed to locate on its system;
 - it searched its email system for information of the relevant description – including the individual accounts of both the people whose role it was to gather up the historic information for 2003 and 2004 and the individuals who were involved back then;
 - after the Commissioner's further enquiries it moved to check the personal drives and emails of specified to staff to double check that no further information was held; and
 - after the Commissioner's enquiries, it began searching the Lotus Notes databases that had the titles that indicated that it may contain information of interest.
36. It provided 'CD one' to the complainant which contained the information that was located after searching the first four locations above and provided 'CD two' after searching the sixth location.
37. The Council explained to the Commissioner that it was confident that the searches that it conducted were comprehensive. It explained that the committee support function has remained consistent and the responsibility for this sort of information had also remained consistent from 2003 to now.
38. The Council explained that it was unable to evidence comprehensively that it had managed to retain all the records because it only brought in improved processes for the archiving, retention and disposal of records in two stages. Firstly the installation of DSIS meant that its electronic

records were better organised and then it introduced a proper policy in 2010.

39. The Council acknowledged that there were statutory requirements to keep some records for Council AGMS open to inspection for six years (sections 100C and 100D of the Local Government Act 1972 and The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000. It confirmed that these requirements had not changed from 2003. It follows that the information requested was approaching the time when it could be lawfully destroyed.
40. The complainant has explained that he suspects that there is further information held because:
 1. The information contained on the CDs consist of only .pdf files and he knows from a third party that the Council's system also has .doc files on it;
 2. Some of the information provided refers to other drives and these may not have been searched;
 3. He understood from an interested third party that the governance officers operated a shared network where reports and minutes may have been exchanged prior to their finalisation;
 4. There was a detailed and comprehensive 'things to do list' for the 2004 Annual Meeting, but nothing similar for 2003; and
 5. He named two key officers and explained that further information ought to have been found that related to them.
41. To ensure that a comprehensive investigation was conducted the Commissioner asked the Council to address these five arguments and it explained that:
 1. It provided all the relevant files, but it converted the word files to pdf files as it did so;
 2. It had moved all the historic information that it held to one location. The previous location did not need to be considered because all the information that it retained was moved into one place;
 3. It confirmed that the relevant officers' shared drives were checked and the information on them was provided in 'CD one';

4. The officer who created the 2004 'things to do list' was not present in 2003 and that the 2004 list was a new innovation by that officer, so no list was held for 2003; and
 5. It confirmed that the two key officers records had been checked and no further relevant recorded information was held.
42. Overall, having considered all the arguments of both sides, the Commissioner is satisfied that on the balance of probabilities the Council does not have any further relevant recorded information that is relevant to this request.

Is relevant recorded information held about what was on the internet for request one?

43. The Council have confirmed that it has searched its records and that it doesn't hold a copy of what was on its internet systems in 2003 and 2004. It confirmed that there was no value in it retaining this information and explained that its destruction of the information accorded with its retention and disposal scheme.
44. However, the Council could point to a third party website who had kept the information that was on its website back then. It agreed to provide the Commissioner and the complainant that link.
45. The Commissioner is satisfied that on the balance of probabilities the Council does not hold copies of what it held on its internet systems for the relevant times.

Exclusion

Has section 12(1) been applied appropriately to the information on its intranet for request one?

46. Section 12(1) provides an exclusion that means that a public authority is not required to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
47. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "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 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.

48. 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 [sic] 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.'

49. The Commissioner has considered the estimate provided in this case to establish whether it was reasonable and related to the activities that are allowed to be included in the estimate.

50. The issue of 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."*

51. 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."

- (1) *What is the public authority's estimate of the work required in this case?*

52. The Council understood that the onus was on it to prove that the work required to process the request would take longer than 18 hours. It concentrated its arguments on the work required to gather all the relevant recorded information that would be held and the work required to extract that same information.
53. It therefore provided the Commissioner with a detailed and reasoned estimate about why it believed that the processing of this request would exceed the costs limit.
54. Firstly, the Council confirmed that it held no backups of its intranet as it was in 2003 and 2004. These pages acted as a gateway to enable files to be accessed. However, it conceded that it may hold the information that could be accessed at that time, but that it would require very considerable work to locate, retrieve and extract that information.
55. The Council explained that it held 2300 Lotus Notes databases and 53 applications that may or may not contain information that is relevant to this request. It provided the Commissioner with a schedule of those databases and explained that altogether it had 2,500,000 records that may or may not be relevant to the request. It identified 500,000 records as the ones where the search could be most productively focussed, but that is still a very large number of records.

Locating the information (activity B)

56. The Council noted that there were 53 different applications and all work differently. For some locating the 2003/4 information would be relatively easy because it would be able to organise the records by their date and therefore find the files of that date. However, for other applications this would not be possible and one would need to consider each record individually.
57. It must also be noted that only checking the dates would not necessarily cover the documents that were on the intranet in 2003 and 2004 and may not pick up any documents that have been modified since. In addition, as the Council did not hold the interface that indicated what was or was not on its intranet in 2003 and 2004 and thus it would be a difficult and onerous job for it to be able to work this out. The only way it suggested that this could be done was to check the information owners' recollection.
58. In conclusion, the Council evidenced that a very conservative estimate of the amount of time it would take to locate each document would be five seconds. This does not include the second checking process noted above.

59. Taking the conservative estimate and looking at only the 500,000 most likely records and multiplying that by 5 seconds gives an estimate for locating the information of more than five hundred hours.

Retrieving and extracting the information (activities C and D)

60. The Council explained overall that it believed that five minutes would be taken for the combined processes of locating, retrieving and extracting the information contained in each record.
61. The Council provided the Commissioner with the only methods it had to extract the data requested. There is no automated process for Lotus Notes and every document must be considered individually.
62. From these methods, it was apparent that the only way it could extract all the information (including the metadata) were the following processes depending on document type:
 1. Documents in Lotus Notes - Copy and pasting the info contained in the document into word – and ensuring the integrity of its formatting. Also need to 'print screen' their metadata and save it into a different file;
 2. Attachments – These need to be saved and it will be necessary to 'print screen' their metadata and saving them into a differently named file;
 3. For web browser documents – It would be necessary to isolate the content using the cherry picking tool from the Notes client and the information would need to be checked for richness (i.e. that italicised text stays so);
 4. For inline attachments – It would need to save the attachment as above and extract both the surrounding inline content (that explains the context of the attachment) and the metadata (as above).
63. It noted that data extraction was a fluid process and there was no one size fits all approach to it. It would therefore take some time.
64. The Commissioner is not convinced that it would take five minutes per document. However, he is satisfied that the relevant work even with specialisation and duplication would take at least fifteen seconds per record and a very conservative estimate would be this amount of time.
65. Taking the very conservative estimate and looking at only the 500,000 most likely records and multiplying that by 15 seconds gives an estimate for locating the information of more than 1500 hours.

66. Overall therefore an estimate of the time that would be required would be over 2000 hours' work. The Commissioner will go on to consider whether there are any reasonable alternatives and whether he considers that in all the circumstances this estimate is 'sensible, realistic and supported by cogent evidence.'

(2) *Are there any reasonable alternatives in this case?*

67. When considering this issue the Commissioner has been guided by the Information Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0042]. In this 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 under the costs 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... "

68. 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..."

69. The Commissioner has therefore considered whether there is an alternative that exists that is so obvious to consider that it renders the estimate unreasonable in this case.

70. As noted above, the Council has explained to the Commissioner that it cannot confirm what from Lotus notes was on its intranet in 2003 and 2004 because it hasn't retained a copy of the interface that was used then.

71. The complainant is aware of a third party who maintained a copy of the interface at a given time. However, the Council are under no obligation under the Act to request this from a third party and in any event the

record that the third party has is only a snap shot of the situation at a given time. It wouldn't enable the Council to be sure it had located all of the information that was relevant to the request.

72. Another possible option would be for the Council to provide everything that it holds that is on its Lotus Notes system. In particular, he has considered whether it would be possible to simply provide the warehouse of Lotus Notes applications from the server that all the records to the complainant (the file sort would be .nsf files). Functionality would not be certain in this case as one would require a programme and interface that is not publicly available, which would cost the Council £10,000 to procure. In any event, the Commissioner's view is that this is not a reasonable alternative because it would not answer the request that was made, which was what was on its intranet in 2003 and 2004. However, he notes that it is open to the complainant to request everything after considering this Notice.
 73. The Commissioner has also considered whether the searches can be minimised through a search tool or something similar. It may be useful to explain that Lotus Notes does not have the capacity to enable one to search definitively for what was present in 2003 and 2004. As an application it operates like a bucket where a great deal of information can be placed set applications sorted by type rather than date. While the metadata can be checked for each file individually as noted above, the work cannot be minimised through a search function or something similar.
 74. In addition as noted above the extraction process is not possible to automate and time could not be saved by setting up a programme to do the work that would be required.
 75. Finally, the Council has indicated that it would have been prepared to facilitate an inspection so the complainant could look at the information and consider what it was that he wanted. The Commissioner would have considered this a reasonable alternative when considering the quantity of records that have been requested in this case. However, the complainant has indicated that this would not be satisfactory to him and thus it is not a way to reduce the relevant work required.
 76. Having considered all the relevant evidence above, the Commissioner is satisfied that there are no reasonable alternatives to checking all the records that may contain relevant information in this case and extracting them manually.
- (3) Has the public authority proved that a reasonable estimate is '*sensible, realistic and supported by cogent evidence*' and over 18 hours?

77. The Commissioner is satisfied that the public authority has evidenced that to answer request one would take more than 18 hours' work.
78. Indeed, the work required would conservatively take more than 2000 hours. 2000 hours is considerably over the 18 hours that constitutes the costs limit and the Commissioner is satisfied that this estimate is based only on a reasonable assessment of the activities that are allowed by Regulation 4(3) of the Fees Regulations. He is satisfied that this estimate is '*sensible, realistic and supported by cogent evidence.*' He relies on the Tribunal's decision in *Quinn* (mentioned in paragraph 48) to accept this estimate in this case. He therefore determines that section 12(1) was applied correctly in this instance.

Procedural Requirements

Section 16(1)

79. 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.
80. 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.
81. Firstly, it must be noted that the Council made a resolute effort to ask the complainant to narrow his request down. The complainant indicated that he would not accept anything less than all the information that he has requested. In the Commissioner's view this constitutes strong evidence that the Council did try and provide reasonable advice and assistance.
82. In addition, the Council offered the complainant the chance to have supervised access to all the information on its Lotus Notes system to enable him to identify what he wished for. The complainant indicated that he did not believe this option was feasible.
83. The Council has indicated that in its view it was unable to offer further advice and assistance in this case. In addition the context of this request must be taken into account. It concerns a long-standing matter and one

where both sides genuinely have different views about his underlying concerns. The Council indicated that it believed that the complainant would not have been amenable to the provision of further advice and assistance as it would have been misinterpreted as an attempt to avoid providing relevant information.

84. The Commissioner has decided that given the information above, the public authority was reasonable not to offer further advice and assistance in this case. He has found that the public authority has therefore complied with section 16(1). His reason for this view is that the structure and nature of the requests makes advice and assistance difficult to provide and, finally, that a fresh request could be made after this notice in any event (to narrow the information requested, should he choose to do so).

Section 11

85. The Commissioner notes that the complainant specifically mentioned that he wanted the information for request one in 'ghost or mirror' form. The Commissioner considers that it is prudent to address this point in this Notice.
86. Section 11 requires that where an individual expresses a preference for the means or form by which information is to be communicated, the public authority shall so far as is reasonably practicable give effect to that preference.
87. However, the Commissioner's view is that the obligation imposed by section 11 does not stand alone. The obligation applies only where the Council is required to disclose information under the Act, in order to comply with section 1(1)(b). As the Council is not required to disclose any information under the Act in this case, there is no need to consider in what form that information is to be provided.
88. It follows that section 11 can impose no additional obligations on the Council when the information is excluded from the Act.

Section 1(1)(a)

89. Section 1(1)(a) requires that a public authority confirms or denies to an applicant whether relevant recorded information is held.
90. The Council firstly claimed it wasn't required to confirm nor deny whether information was held because it was relying on section 14(1). It then withdrew its reliance on section 14(1) and denied to the complainant that it held relevant recorded information for request one.

91. It turned out that it did hold relevant recorded information for request one. In wrongly denying that it held relevant recorded information it breached section 1(1)(a). However, as the costs exclusion applied to the request no remedial steps can be ordered in this case.

Section 1(1)(b)

92. Section 1(1)(b) requires that a public authority provides non exempt information to the requestor. The Commissioner expects that this is done before his involvement.
93. The Council failed to provide either of the two CDs containing relevant recorded information for request two to the complainant before his intervention.
94. Its failure to do this was a breach of section 1(1)(b). The Commissioner does not require any remedial steps for this case because the information has already been released.

Section 10(1)

95. Section 10(1) requires (subject to a number of exemptions – none of which are relevant in this case) that a public authority complies with section 1(1) in 20 working days.
96. The Council failed to comply with section 1(1)(a) in relation to request one and section 1(1)(b) in relation to request two in 20 working days and breached section 10(1).

Section 17(5)

97. Section 17(5) states that any public authority relying on section 12(1) must within the time limit for complying with section 1(1) give the applicant a notice stating that fact. As noted above, the time limit for complying with section 1(1) is found in section 10(1). This states that a response should be issued as soon as possible and in 20 working days in any event.
98. The Council failed to explain that it was relying on section 12(1) for the work required to answer request one until during the Commissioner's investigation. Its failure to do this was a breach of section 17(5). The Commissioner does not require any remedial steps for this breach as the content of any new refusal notice would be upheld by this Decision Notice.

The Decision

99. 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 could rely on section 12(1) appropriately for request one;
- It did not hold further relevant recorded information for request two;
- Section 11 did not impose any further obligations in this case; and
- It complied with section 16(1) in this case.

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

- It breached section 1(1)(a) because it wrongly denied that it held relevant recorded information for request one before the Commissioner's involvement;
- It breached section 1(1)(b) because it failed to provide the complainant with the information he was entitled to for request two before the Commissioner's involvement;
- It breached section 10(1) because it failed to comply with section 1(1) of the Act in 20 working days; and
- It breached section 17(5) because it failed to issue a notice explaining that it was relying on section 12(1) in 20 working days.

Steps Required

101. The Commissioner requires no steps to be taken.

Right of Appeal

102. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

103. 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.

104. 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 12th day of September 2011

Signed

**Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 1 General Right of Access

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

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 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."

(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 Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

Section 11 – Means by which communication can be made

(1) 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 authority shall so far as is reasonably practicable give effect to that preference.

(2) 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.

(3) 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

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

Section 12 Exemption where cost of compliance exceeds 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 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.'

Statutory Instrument 2004 No. 3244

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

...

The appropriate limit

3. (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

Estimating the cost of complying with a request - general

4. - (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request

would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

(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.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.'