

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 28 September 2011**

**Public Authority:** Department for Education  
**Address:** Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

### **Summary**

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The complainant requested a considerable amount of information under the Freedom of Information Act 2000 ('the Act') from the Department for Education ('the DfE'). The request concerned the cost of it appealing the results of a number of cases about the rights of teachers working in European Schools right up to the Supreme Court.

The DfE provided some information, gave some other estimates and explained that it had no obligation to provide information that had not yet been generated. The complainant referred the case to the Commissioner. During the course of the investigation, the complainant agreed to focus his complaint on the information contained in the Ministerial Submissions about the costs to the DfE of continuing the litigation. Further information was located and provided by the DfE.

The Commissioner finds that on the balance of probabilities the DfE holds no further relevant recorded information that falls within the scope of the complaint. However, he finds that the failure to provide the information now disclosed during his investigation was a breach of section 1(1)(b) and 10(1). He also finds that there were other procedural breaches of section 10(1), but requires no remedial steps to be taken in this case.

### **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 Commissioner notes that the Department for Education (DfE) was the Department of Children, Schools and Families up to 13 May 2010. The Commissioner has served this Notice on the DfE and for consistency will refer to the public authority as the DfE throughout this Notice.
3. To understand what was requested and what relevant recorded information would be held at the date of the requests, the Commissioner considers it is also appropriate to provide a brief synopsis of legislation and litigation that are related to them.
4. The first European School was set up for the children of officials and employees of the European Coal and Steel Community in 1957. Its purpose was to provide a European education for these children and its role was then formally redefined in the 1994 Statute of European Schools. It was possible for staff to be seconded to work in European Schools. The process was set out in the 1996 Regulations for Members of the Seconded Staff of the European Schools. They provide that its teachers are to be employed on a series of fixed term contracts – that generally last up to nine years (known as the 'nine year rule'). This was made up of an initial probationary period of two years, and a further period of three years, which is renewable for a further four years. The Supreme Court explained that the nine year rule was an attempt to balance expertise against institutionalisation.
5. In 2002, the UK Government passed the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) (the '2002 Regulations'). The effect of regulation 8 was that successive fixed-term contracts are turned into a permanent employment contract, unless the use of those fixed-term contracts can be justified objectively.
6. Litigation was commenced by a number of teachers who were employed by the DfE and affected by the operation of the nine year rule. It became focussed on the operation of the 2002 Regulations to those seconded. There were two lead cases that were conjoined at the Court of Appeal stage.

7. The first case concerned Mr Fletcher who was employed in a European School in England. The first stage of the litigation was heard in the Employment Tribunal<sup>1</sup>. It held:
  1. the employment of the Seconded teachers in European Schools was subject to the 2002 Regulations;
  2. the use of successive fixed term contracts could not be objectively justified and therefore the contracts had been turned into permanent employment contract by 2002 Regulations;
  3. remedy – Mr Fletcher was only entitled to payment for his contractual notice period and not entitled to make claims for unfair dismissal.
8. The DfE appealed this case to the Employment Appeal Tribunal. It argued that the nine year rule was objectively justified by the 1996 Regulations. The Employment Appeal Tribunal held that the 2002 Regulations took precedence and therefore upheld the Employment Tribunal's findings.
9. The second case concerned Mr Duncombe (and some other individuals) who were seconded to a European School in Germany. The Employment Tribunal believed that it did not have jurisdiction to hear these claims. This was appealed to the Employment Appeal Tribunal by Mr Duncombe, which overturned the Employment Tribunal's findings, upheld his case and allowed Mr Duncombe the right to pursue a claim in unfair dismissal<sup>2</sup>.
10. The cases were then appealed to the Court of Appeal by the DfE<sup>3</sup>. On 14 December 2009, the Court of Appeal unanimously dismissed the appeal and held:
  - the employment of the Seconded teachers in European Schools was subject to the 2002 Regulations – this included both domestic applicants and people working abroad;
  - the use of successive fixed term contracts had not been objectively justified and therefore the contracts had been turned into permanent employment contracts by the 2002 Regulations; and

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<sup>1</sup> *Fletcher v Secretary of State for Children Schools and Families* UKEAT/0095/08/RN

<sup>2</sup> *Duncombe & Ors v Secretary of State* UKEAT/0433/07/dm

<sup>3</sup> *Duncombe and others v Secretary of State for Children, Schools and Families* 2009 EWCA Civ 1355

This decision can be found at the following link:

<http://www.bailii.org/ew/cases/EWCA/Civ/2009/1355.html>

- remedy – the teachers were entitled to make unfair dismissal claims, because otherwise there would not be an effective remedy in community law available to them.
11. Finally, the case was appealed by the DfE to the Supreme Court. On 30 March 2011 it found unanimously in the DfE's favour and held<sup>4</sup>:
1. the employment of Seconded teachers in European Schools was subject to the 2002 Regulations;
  2. however, the use of the last fixed term contract to bring the employment up to nine years was objectively justified by the 1996 Regulations; and
  3. it followed that there was no remedy available to the applicants.

## The Requests

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12. On 27 March 2010 the complainant made the following request for information (it was clear from the context of the request that it referred to the matter over which there was litigation that has been summarised in paragraphs 6 to 10 of this Notice above):

*'I ask for specific/clear details on this government's extensive spending to date on this entire employment issue, including all associated legal costs (in court time+preparation time/advice)/all associated DCSF staff salary costs for dealing with the issue/all associated ministerial costs.*

*I also ask for details on the budget for future legal/departmental costs due to this.'*

13. On 27 April 2010 the public authority issued a response. It explained:
1. it had spent £181,249 on its total legal costs over the last four financial years on this matter and provided an annual breakdown;
  2. it was not able to provide details of its staff salaries or Ministerial costs because it did not hold information in the format requested. It explained that it held this information as part of its normal

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<sup>4</sup> *Duncombe and others v Secretary of State for Children, Schools and Families* [2011] UKSC

14. This Decision can be found at the following link:

[http://www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2010\\_0025\\_Judgment.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0025_Judgment.pdf)

administrative expenditure and could not identify the costs separately;

3. it also believed that the work required to identify this information would exceed the costs limit [24 hours doing only specified activities] and it would rely on section 12(1); and
  4. to provide advice and assistance, the DfE explained that the complainant should consider making a narrower request, as it may be able to process it within the cost limit.
14. On 4 May 2010 the complainant wrote to the DfE. He explained that he wanted to know the information about staff and Ministerial costs and felt it was improper that he had not received this information. In addition, he pointed out that his original request asking for the budget for future legal and departmental costs was not answered. He also asked for further information about how the spending was authorised and who would be responsible for authorising further spending.
  15. On 27 May 2010 the DfE replied. It confirmed that it maintained its view that it did not hold the information about staff time but it also claimed that for it to try and find it would exceed the costs limit which in the Commissioner's view is inconsistent and appears contradictory. It also confirmed that it did not have a separate budget for future costs and explained why. It provided the information about the officials responsible for authorising current and future spending. It also confirmed that the decision to continue action is always taken at Ministerial level and confirmed that Ministers received regular updates on the progress of ongoing litigation. It explained that because new information was requested, it was answering those questions, rather than undertaking an internal review.
  16. On 31 May 2010 the complainant responded. He expressed concern that many individuals were involved in handling his request. He also expressed concern about the nature of the costs limit and asked for that information again. He also explained that he was not satisfied that there was no money set aside to fight this case to the Supreme Court. He asked a number of further questions about how this decision was taken and with what information.
  17. On 25 June 2010 the DfE replied. It explained why different individuals handled his request. It explained the costs limit. It confirmed that it believed it had provided the appropriate information it held about the costs it had incurred and explained that the Supreme Court preparation was just beginning. It also explained which Ministers were responsible and that as the litigation had taken many years, this meant that numerous individuals were informed. It explained that *'the Minister has*

*always been given full information on the financial and legal implications of the decision being put to him as they were known at that point in time.'* Once again, it also explained that because new information was requested it was issuing a new response, rather than doing an internal review.

18. On 5 July 2010 the complainant contacted the DfE again to express his dissatisfaction about the new response. He explained that he viewed the responses as inconsistent – because he did not think it was possible to fully inform the Minister about the costs of taking the decision without having estimates of the costs of taking this action. He asked further questions about the way the decision was taken and the allocation of budgets.
19. On 3 August 2010 the DfE issued another response. It maintained it couldn't provide the information about staff costs within the costs limit. It explained that procedure was followed when keeping Ministers informed and that it was not always possible to provide exact estimates of costs. It explained that the Ministers answer submissions as part of their role and that the production of submissions was not recorded separately. It also explained how the costs limit applied again. It explained that the European Schools' Team's budget was able to absorb the legal costs of these cases. It explained how the budget worked. It explained that this was the last time it would answer the questions about these issues and that the next letter will be regarded as a request for an internal review.
20. On 15 August 2010 the complainant wrote to the DfE to express dissatisfaction and to ask for an internal review. He expressed particular concern about the failure to completely answer the first paragraph of his request dated 27 March 2010. He also outlined the alleged inconsistency of his responses already noted in paragraph 17 and asked further questions about the responses.
21. On 22 September 2010 the DfE communicated the results of its internal review. It explained:
  1. it had provided all the accurate information that it held about costs (the legal costs for the four years);
  2. it could not provide accurate information about other costs, because it did not record its day to day activity in this way and this issue was one of its normal activities;
  3. however, it did provide an estimate of staffing levels and responsibilities of the Department and the salaries of those who did the work. It said that a rough estimate of 10% of their time meant

that it could roughly calculate staffing costs for the complainant and did so;

4. it explained that those staff were based in London where the cases were heard and so there were no travel or subsistence costs;
5. it could not provide information about the cost of Ministerial time because it did not record their time this way and it was impossible to say how long the Minister read, considered and responded to each submission;
6. it confirmed that it did not hold projected future costs and that it would not be possible for it to do so because they are dependant on the outcome of the litigation;
7. it also confirmed that there was no right to the generation of new information;
8. it provided an explanation about what was told to the Minister when considering the litigation. It explained that the information mostly related to the liabilities of abandoning the case and not projected costs of administrative costs within its normal business; and
9. finally, it provided an explanation about the progress of the litigation and explained that even if it abandoned the Supreme Court litigation, it would still need to attend and defend a number of Employment Tribunal cases.

## **The Investigation**

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### **Scope of the case**

22. On 6 November 2010 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.
23. On 15 February 2011 the complainant confirmed that he was content for the scope of the Commissioner's investigation to consider:

[1.] *Whether there was any further recorded information about costs contained in the submissions given to Ministers about continuing this litigation; and*

[2.] *In relation to 1 above, whether the information can be generated from the components of work done, and if so, whether this can be done in the costs limit.*

24. During the course of the Commissioner's investigation the DfE released one line of Ministerial Submissions that was relevant to the complainant's original request. It was disclosed on 31 March 2011.
25. On 7 April 2011 the complainant confirmed to the Commissioner that he wanted a Decision Notice to be issued on the following three things:
  1. *Whether there is any further recorded information in respect to the information within the scope of this complaint... this concerns the information about the costs of continuing the litigation contained in the submissions given to Ministers;*
  2. *In relation to 1 above, whether the information can be generated from the components of work done, and if so, whether this can be done in the costs limit; and*
  3. *To deal with all issues of timeliness. In particular, to provide a formal record of the delays that were experienced.*
26. Prior to agreeing the scope of the Commissioner's investigation, 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**

27. On 17 January 2011 the Commissioner wrote to the complainant and the DfE to confirm that he had received an eligible complaint.
28. On 2 March 2011 the Commissioner spoke to the DfE on the telephone to explain the scope of the complaint and to discuss whether any extra information could be provided to the complainant. He made enquiries in writing on the following day.
29. On 15 March 2011 the DfE telephoned the Commissioner to explain what had now been considered and to ask how the investigation was to proceed. The Commissioner requested a copy of all the information that was potentially relevant within the Ministerial submissions, so that he could be certain that the correct lines had been drawn by the DfE. He received this information on 18 March 2011. He responded the same day to ask that certain information was disclosed to the complainant.
30. The information was released on 31 March 2011. The Commissioner wrote to the complainant the same day to ask whether the additional information was adequate or whether he wanted a Decision Notice to be issued. On 7 April 2011 the complainant telephoned the Commissioner to discuss the situation and the Commissioner confirmed what was said in writing. It was agreed that a Decision Notice was required.



31. On the same day, the Commissioner made further detailed enquiries of the DfE. The DfE called him the next day to provide preliminary answers over the telephone and provided formal written answers on 21 April 2011.

## Analysis

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### Substantive Procedural Matters

*Did the public authority hold further relevant recorded information that is within the scope of the complaint?*

32. Section 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 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 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 27 March 2010.
33. Firstly, it should be noted that one line of relevant information was located during the course of the Commissioner's investigation and released to the complainant. The Commissioner wants to note that the DfE did breach section 1(1)(b) because it failed to provide the single line of information that was relevant to the request until the Commissioner's intervention. However, he requires no remedial steps to be taken because the information has now been released.
34. The remainder of his analysis will focus on whether there was any further relevant recorded information held within the scope of the complaint. As noted above, the Commissioner and the complainant agreed that his investigation would focus on the recorded information held about the costs of continuing the litigation contained in the submissions given to Ministers. This is a subset of the information originally requested on 27 March 2010 and was one of the key points of the complainant's concerns in his letters dated 5 July 2010 and 15 August 2010.
35. 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.

36. 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.

37. The Commissioner has considered the arguments of both sides and has looked at the factors specified in *Bromley*.

*(I) The DfE's analysis the request*

38. It is noted that the complaint focussed on a narrow subset of the original request. However, during the Commissioner's investigation, it was clear that the request was asking for set information of the following sort:

1. the information must be about the costs of continuing the litigation (discussed in paragraphs 6 – 10 above);
2. the information must be contained in the Ministerial submissions; and
3. the information must have been held on 27 March 2010.

39. The Commissioner is satisfied that the DfE understood what it was being asked for. This is because he has discussed it on the telephone with the members of staff who were responsible for the search and they have confirmed what was being looking at. In addition, the answers he received to his written enquiries showed that the parameters of this subset of the original request were understood.

*(II) The scope of the searches that it had conducted*

40. To understand the scope of the searches, it is necessary to understand how the DfE organises records of this kind. It explained that:

- Ministerial submissions are held as part of the policy process;
- its policy teams maintained these files in accordance with its records management retention policy;
- this records management retention policy requires it to keep Ministerial submissions for at least ten years;
- it holds Ministerial submissions in both paper and electronic form; and

- it believed that all the Ministerial submissions relevant to the complainant's request were held electronically. Its file management protocols mean that the electronic search on keywords would enable all the relevant information to be located by it.
41. The DfE explained that experienced staff in its policy team had conducted a number of searches in response to the complainant's requests for information. It confirmed that this member of staff was aware of both how the litigation progressed and the submissions put to the Minister on this issue. It explained that the person was aware of the submissions because she wrote them. It also confirmed that all the relevant files were searched by key word.
  42. The Commissioner can confirm that the DfE wrote to him during the course of this investigation and provided him with a number of items of information about financial measures to ensure that the Commissioner agreed with it that the information fell outside the scope of the request. It explained that this shows that it dealt openly and in good faith with the requester and the Commissioner.
  43. The Commissioner also asked the DfE to confirm to the complainant that this information existed, but was outside the scope of his original request. The DfE did as the Commissioner asked.
  44. The DfE explained after conducting multiple searches that it was confident that no further information within the scope of the complaint remains.
  45. Overall, the Commissioner is content that the correct searches were undertaken by the right people in this case and considers this factor strongly suggests that no further relevant recorded information is held.

*(III) Any other reasons why the DfE believes it does not hold relevant recorded information.*

46. The complainant explained that a statement made by the DfE in the correspondence indicated that more information must be held in this case. It was made on 25 June 2010 and stated:
  - 'the Minister has always been given full information on the financial and legal implications of the decision being put to him as they were known at that point in time.'
47. The complainant explained that in his view 'full information' must amount to more than the single line that was since discovered by the DfE. In particular, in his view it should contain proper information about the amount of resource that would be used to progress the litigation. He explained that the amount of money was over a quarter of a million

pounds and that he anticipated that this amount would be missed from its budget.

48. The DfE explained it had good reasons why the Minister was only told that the costs could be met out of existing budgets, which were:

- the important information for the Minister about the ongoing costs was where the money was coming from. In this case the European Schools' Team's budget was for facilitating the running of the European Schools programme and this included potential employment litigation with the teachers. This information was communicated to the Minister for his information and further information was not therefore needed;
- the advice provided to the Minister was focussed on the rationale for pursuing legal action and the important cost when considering this matter is what it would cost it to lose all the cases (both the ongoing cases and future claims). It explained that it followed that the majority of the financial advice provided to the Minister was about the possible repercussions of the cases and that the submissions did not contain much information about the internal costs of fighting the cases;
- such information would be very difficult to provide had it been required. This was because:
  1. it did not record the time that its staff used to consider its position in this matter because it was part of their normal role. It did not operate a billing system like a law firm would. It did provide very rough estimates to the complainant and this was the best that it could do (this also was not required by the Act); and
  2. litigation was by its very nature uncertain. For example, in this case the Supreme Court decided the case in the DfE's favour on a narrow point of statutory construction – however, the preparation and bulk of the arguments heard were focussed on why the Court of Appeal's substantive decision erred. The Supreme Court explained that it would have needed to have referred relevant issues to the European Court of Justice, had it decided the point on statutory construction differently, and in the Commissioner's view this shows that the cost of this case was even uncertain at the date of judgment.

49. The Commissioner has considered the balance of these arguments. He notes that the DfE was not as clear as it should have been when issuing its initial responses and that it was reasonable for the complainant to believe that further information was outstanding given what was said. However, the Commissioner is satisfied that the rationale now provided

by the DfE is convincing. Having considered all the financial information contained in the submissions he has decided that on the balance of probabilities the DfE has provided all the information that falls within the scope of the complaint.

50. Overall, he is satisfied that on the balance of probabilities the DfE did not hold any further relevant recorded information that is relevant to this complaint. The Commissioner is therefore satisfied that the DfE's current position now accords with its obligations under section 1(1) of the Act.

### **Procedural Requirements**

51. Section 10(1) provides that public authorities should comply with the requirements of section 1 within 20 working days.
52. In this case, the Commissioner has determined that the DfE breached section 10(1) in the following respects:
1. the DfE failed to address the whole request in twenty working days. In particular, it failed to answer the second part of the original request dated 27 March 2010 until the complainant reminded it on 4 May 2010. In the Commissioner's view, its failure to confirm or deny whether relevant recorded information was held in 20 working days was a breach of section 10(1); and
  2. the DfE failed to comply with section 1(1)(b) in 20 working days. This was because it failed to disclose the single line of relevant recorded information until the Commissioner's investigation. This was also a breach of section 10(1).
53. The DfE has also addressed these two defects during the course of the correspondence and therefore the Commissioner does not require any further remedial steps.

### **The Decision**

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54. 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 was correct in stating that it held no further recorded information that was within the scope of the complaint.
55. 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)(b) because it failed to disclose one line of relevant recorded information before the Commissioner's intervention;
- it breached section 10(1) by failing to provide this information to the complainant in 20 working days; and
- it breached section 10(1) by failing to confirm that it did not hold relevant recorded information for the second paragraph of the request in 20 working days.

## Steps Required

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56. The Commissioner requires no steps to be taken.

## Other matters

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57. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters to enable the DfE to improve its compliance with the Act:

### *Conducting an internal review*

58. The DfE took a pragmatic approach and tried to address the new issues as they arose, rather than referring the matter straight into its internal review process. The Commissioner appreciates that the public authority was trying to be helpful in this case. However, he wants to reiterate his view that any expression of dissatisfaction should be regarded as a request for an internal review. His view is therefore that the 4 May 2010 communication should have put the internal review process into motion in this case. His view is that the DfE should have answered the new requests under a separate cover and reviewed those responses in the event that the complainant remained dissatisfied with them in a separate internal review.

### *Issuing unclear responses*

59. In this case, the DfE in its first two responses claimed the following two things at the same time:

- it held no further relevant recorded information that was relevant to the request for staff and Ministerial time; and
- it would be too costly to generate the recorded information that it held for these aspects and thus it was relying on the costs limit [section 12(1)].

60. In the Commissioner's view, these two positions are inconsistent. There are three potential positions that are possible to hold. They are:

- it is not able to know whether it holds relevant recorded information without doing work that exceeds the cost limit. It therefore cannot confirm nor deny whether it holds information and is therefore relying on section 12(2);
- it does not hold relevant recorded information; or
- it does hold relevant recorded information, but it would require work that exceeds the cost limit to provide this information. It was therefore relying on section 12(1).

## Right of Appeal

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61. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

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)

62. 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.

63. 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 28<sup>th</sup> day of September 2011**

**Signed .....**

**Pamela Clements  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex

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### Section 1 - General Right of Access

Section 1 of the Act provides that:

- (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.”
- (3) Where a public authority –
  - (a) reasonably requires further information in order to identify and locate the information requested, and
  - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”
- (4) 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.”
- (5) 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).”

- (6) 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”.

## **Section 10 - Time for Compliance**

Section 10 of the Act provides that:

(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 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.