

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 6 September 2011

**Public Authority:** London Borough of Newham  
**Address:** Newham Dockside  
1000 Dockside Road  
London  
E16 2QU

### Summary

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The complainant contacted the London Borough of Newham (LBN) and requested copies of successful appeal decision notices relating to tickets issued by CCTV for parking violations at a specific location. LBN refused to comply with the request on the grounds that determining whether the information was held would exceed the appropriate costs limit. The Commissioner has investigated and finds that LBN was correct to apply section 12(2) of the Freedom of Information Act 2000 to the request. He requires no remedial steps to be taken by LBN.

### 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. At the beginning of the investigation the Commissioner asked for more details relating to what the requested information was. LBN responded with the following explanation:

*"If representations against a penalty charge notice (PCN) are made but rejected by the Council, the PCN recipient is then given 28 days to make payment or lodge an appeal against the Council with the Parking*

*and Traffic Appeals Service (PATAS). PATAS are independent of the London Local Authorities and any decision they make regarding the validity of a PCN is binding on both the customer and the Local Authority."*

## **The Request**

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3. On 22 October 2010 the complainant requested the following information:

*"On a separate point, I would like to make a Freedom of Information Act request for all copies of successful PTAL Appeal Decision Notices relating to tickets issued by CCTV concerning parking violations at this location. I am happy for any personal identification to be removed from these decision notices should this be considered necessary to comply with the act."*

4. On 19 November 2010 LBN responded to the complainant and stated in response to the information request that:

*"Unfortunately this information is unavailable as the system is not configured in a way that allows us to identify appeals to the Parking and Traffic Appeals Service by location of issues."*

5. The complainant requested an internal review of the decision on the same day.
6. On 2 December 2010 LBN wrote to the complainant with the outcome of the internal review. The internal review upheld its original response.

## **The Investigation**

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### **Scope of the case**

7. On 2 December 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 investigate the fact that LBN had not provided him with the requested information.

### **Chronology**

8. On 15 April 2011 the Commissioner wrote to LBN. He asked LBN to clarify the reason for refusing to disclose the information as it was not clear from the correspondence sent to the complainant. He also made

enquiries about the type of information requested and how this might be held by LBN.

9. On 23 May 2011 LBN responded to the Commissioner. LBN provided some background regarding how the Parking and Traffic Appeals Service (PATAS) works and explained that the information requested could not be searched for by location.
10. On 23 May 2011 the Commissioner wrote back to LBN and asked for further clarification as to whether the information was held and what searches had been undertaken to determine this. He also asked for a more detailed description as to how information of the type requested was recorded and whether it was routinely made available in the public domain.
11. On 10 June 2011 LBN responded to the Commissioner. LBN provided details of the operation of the 'Cinergic' system, where the information would be likely to be recorded, including how information could be searched for, and confirmed that the requested information was not published.
12. On 16 June 2011 the Commissioner wrote to LBN. He explained that, based on the responses provided by LBN to him, his view was that information was likely to be held but he understood that the tasks involved in complying with the request may engage the costs limit. He therefore asked LBN to explain in greater detail as to why it considered the costs limit might be exceeded and to confirm whether any advice and assistance had been given to the complainant.
13. On 13 July 2011 LBN responded to the Commissioner. LBN provided a breakdown of the costs that would be incurred in complying with the request and concluded that determining whether or not information was held would exceed the appropriate costs limit.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 12 – the cost of compliance exceeds the appropriate limit**

14. Section 12(1) of the Act allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).

15. Section 12(2) allows a public authority to refuse to confirm or deny whether it holds information of the nature requested if simply to do so would in itself exceed the appropriate limit.
16. The appropriate limit for central government departments is £600 and for local government, like LBN in this case, it is £450 or 18.5 hours of one member of staff's time.
17. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
  - determining whether the information is held;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
18. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. Therefore, it is the Commissioner's task in this situation to decide whether or not the estimate provided by LBN is reasonable in the circumstances.
19. In correspondence to the Commissioner, LBN explained that the decision in each appeals case is updated on its system but that *"as it currently stands the reporting suite is only configured to retrieve successful appeals, i.e. all successful appeals, not filtered by location."*
20. In this case there are several criteria which the requested information must meet, including location (for example, whether the ticket relating to the appeal was issued via CCTV). Therefore, the Commissioner sought further clarification on how information was recorded and searched for.
21. LBN explained to the Commissioner that in order to retrieve, collate and extract the requested decision notices, it would have to identify the relevant PCNs fitting the criteria in the complainant's request, so that it could go on to identify the correct case and subsequent appeal.
22. LBN informed the Commissioner that PCNs referred to in the request are:

*"...processed via a system called Cinergic. The council issues over 200,000 PCNs per year and Cinergic contains a suite of reports to retrieve general information about PCNs. Individual PCN records can be searched by PCN number, VRM, surname, business name or keeper postcode using the generic search screen but the request received in*

*this case related to a number of cases, so would require use of the Cinergic report suite. This suite of reports covers many different datasets but does not contain a report which specifically allows you to retrieve a list of PCNs which fall into the criteria formulating the request – that: a) the PCNs were issued at [location given by complainant]; b) the PCNs were issued via CCTV; c) the PCNs were for a parking contravention; and d) the PCNs had been allowed following an appeal at the Parking and Traffic Appeals Service.”*

23. LBN told the Commissioner that at the time of the request, it carried out a search to see if there were any reports it could run to identify the cases requested. It confirmed to the Commissioner that there are no such reporting functions available. LBN stated that:

*“an advanced search function was checked but there were no fields which would allow the request’s criteria to be searched. Without being able to identify the cases in the first place, it was not possible to then retrieve, collate and remove personal data from the decisions requested.”*

24. In order to understand whether compliance with the request using different methods to those available from the reporting suite would engage section 12, the Commissioner asked LBN to provide a detailed breakdown of the costs it would incur in determining whether the requested information was held.

25. LBN told the Commissioner that the CCTV parking records on the Cinergic system run from January 2002 to December 2009 and that using the ‘Appeals Lodged Report’ the number of records requiring a manual search to identify matches to the relevant criteria could be limited. LBN explained how it could exclude on-street parking, bus lane violations and CCTV moving traffic PCNs by adding filters in Excel therefore narrowing the information identified as CCTV parking PCNs. LBN stated:

*“We have run the report for this period and can confirm that after filtering there are 3,115 records which require manually checking to identify the location and whether or not there was a successful appeal at PATAS.”*

26. LBN went on to explain that:

*“there are three stages involved in completing this request and while we can calculate how long the first stage will take, it is not possible to calculate stage two or three until we have established how many fall into the relevant category.”*

27. LBN estimated that the first stage, searching through the CCTV parking PCNs and checking the location of each of the 3,115 records, would take an average of 31 seconds per record. This was based on a sample of 10 cases. Therefore the total time to complete this task would be 26 hours and 49 minutes.
28. The second stage described by LBN then involved an inspection of the records to see whether an appeal had been successful. The number of records identified under this criterion was unknown, but LBN told the Commissioner that on a sample of ten cases the average time taken per record was nine seconds.
29. The third stage involved the retrieval of the appeal decision notices. LBN again could not provide a total estimate for this task. The Commissioner notes that for this stage LBN also counted tasks involved in redacting personal data from and taking photocopies of the decision notices. The Commissioner would remind LBN that section 12 of the Act does not allow public authorities to include in their estimates the time taken for any redactions that need to be made prior to disclosure. Extracting the requested information from a document containing it is permitted; however, in this case it appears the third stage involved more tasks concerned with reproducing and redacting the documents.
30. Even if the Commissioner were to discount most of the activities described by LBN in the third stage of compliance with the request, it is clear to him that the rest of the tasks involved would take a considerable amount of time and therefore exceed the appropriate costs limit.
31. The Commissioner's view is that as the 3,115 records initially identified have not been searched along the lines of the other criteria, LBN cannot determine whether it holds the requested information without exceeding the costs limit. Therefore, section 12(2) of the Act – which releases a public authority from its duty to confirm or deny whether information is held – can be applied to the request.

### **Section 16 – Duty to provide advice and assistance**

32. Section 16(1) of the Act places a duty on public authorities to provide advice and assistance to applicants who have made or are planning to make requests for information. Where a request engages the costs limit, the advice and assistance usually involves the public authority opening a dialogue with the applicant to try to find ways to refine the request in order to bring it under the appropriate costs limit.
33. From the correspondence provided to him, the Commissioner is aware that LBN did not engage with the complainant in an attempt to refine his request to enable it to be brought under the costs limit. This may be due

to the fact that the request itself was already very specific with various criteria, which meant that detailed searches would have to be run by the reporting suite, and manual documents located and retrieved, in order to comply with the request.

34. The Commissioner would always encourage public authorities to contact applicants and carry out their duties under section 16(1) of the Act; however, in some cases it simply might not be possible to refine a request. In this case, the Commissioner understands that the complainant wishes to obtain very specific information and it is the tasks involved in determining whether the information is held that incur the substantial cost. For this reason, he considers that requiring LBN to provide advice and assistance to the complainant at this stage, to either further refine the request or broaden it, is unlikely to offer any benefit to the complainant.
35. The Commissioner does note from a good practice perspective, however, that even if LBN were unable to provide advice and assistance to practically refine the request, the explanation as to why the costs refusal applied could have been improved. The Commissioner would expect LBN to provide more general advice about the costs exemption in relation to any future freedom of information requests that the complainant may make.

## The Decision

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36. 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:
  - LBN correctly applied section 12(2) of the Act to the request; and
  - LBN responded to the request complying with section 1(1) within the statutory timescale laid out in section 17(5) of the Act.
37. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - LBN failed to provide adequate advice and assistance under section 16(1) of the Act;
  - LBN failed to provide a refusal notice compliant with section 17(5) of the Act by not specifically citing section 12(2) at the time of the refusal; and

- LBN failed to give details of the right to request a decision from the Commissioner and therefore breached section 17(7)(b) of the Act.

### **Steps Required**

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38. The Commissioner requires no steps to be taken.



## Right of Appeal

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39. 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@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk).

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

40. 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.
41. 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 6<sup>th</sup> day of September 2011**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### 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."

### Duty to provide Advice and Assistance

#### **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."

### Refusal of Request

#### **Section 17(1) provides that -**

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

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

#### **Section 17(2) states –**

"Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

1. 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
2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

**Section 17(3) provides that -**

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

**Section 17(4) provides that -**

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5) provides that -**

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

**Section 17(6) provides that –**

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7) provides that –**

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”