

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 13 January 2016

Public Authority: London Borough of Hammersmith & Fulham
Address: Hammersmith Town Hall
King Street
Hammersmith
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has made a number of requests to the London Borough of Hammersmith & Fulham (the Council) for information required for the preparation of an insurance claim pursuant to an incident which resulted in damage to his car. The Council was ordered to provide a fresh response to a number of these requests by the First-tier Tribunal (Information Rights) after it upheld an appeal against the Council's initial application of section 14(1) (vexatious requests) of FOIA. It is the Council's revised response to four of the requests (6) and 8) – 10) as originally numbered) that form the focus of the present notice.
2. The Commissioner has found that the Council has provided the relevant information in connection with requests 6 and 9. With regard to request 8, the Commissioner has decided that the Council initially breached section 16 of FOIA by failing to provide adequate advice and assistance but remedied this during the course of the Commissioner's investigation. In relation to request 10, the Commissioner has decided that the Council correctly applied section 12 (costs of compliance) to the request and discharged its duty to provide advice and assistance in accordance with section 16 of FOIA. The effect of these findings is that the Commissioner does not require any steps to be taken by the Council.

Request and response

3. The complaint has grown out of a case previously considered by the Commissioner under the reference FS50534825¹ and which was disposed of by the First-tier Tribunal (Information Rights) in its decision of 17 December 2014 (EA/2014/0210). The following requests were identified and considered as part of the appeal proceedings:

- 1) *Please send me a copy of LBHF's insurance claims policy in force at the time (or other document) that confirms council employees are tasked with preparing insurance claims against their employer. (2 October 2013)*
- 2) *LBHF's Data Protection policy. (26 October 2013)*
- 3) *LBHF's insurance claims policy in force at the time of my claim. (26 October 2013)*
- 4) *Please therefore supply a full comprehensive breakdown of complaints, correspondence and accidents concerning the location. (26 October 2013)*
- 5) *[Named individual] states LBHF carries out "reactive" work on the location. Please disclose details of what correspondence LBHF has been 'reacting' to regarding the location, if not complaints. (26 October 2013)*
- 6) *Please also disclose LBHF's insurance claims spread sheet (with personal data redacted) and details of your Enquiries and Complaint's System (ECS) pertaining to the location. (26 October 2013)*
- 7) *Please also supply details of all call-out reports and repair works for the location, including details of what prompted the call out or repair. (26 October 2013)*
- 8) *On 8 September 2010 I requested the following from [Named individual]:*

How many times requests for compensation for damage to vehicles have been made, what percentage of requests are met,

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1014662/fs_50534825.pdf

how many are denied, what legal action has been taken and the results of those legal claims. I have yet to receive a response from [Named individual]. Please disclose this information or state which exemption you are applying under the act. (26 October 2013)

- 9) *Please therefore disclose internal training documents or policy details and protocols concerning the role and responsibility of LBHF's insurance officers. (14 November 2013)*
 - 10) *Please therefore disclose all emails and correspondence concerning the problem of residents having access to emergency service keys for the location and concerning vehicles driving into the bollard. (14 November 2013)*
 - 11) *Please also disclose all financial records pertaining to insurance claims at LBHF. (14 November 2013)*
 - 12) *Please also disclose written responses to all insurance claims made to LBHF from the insurance claims department. (14 November 2013)*
 - 13) *Please also disclose details of all court action taken against LBHF for road traffic accidents. (14 November 2013)*
 - 14) *Please also disclose all details of all complaints made against LBHF for the previous five years. (14 November 2013)*
 - 15) *Please also disclose all internal emails sent and received by LBHF's insurance claims department." (14 November 2013)*
4. The Tribunal's judgment at paragraph 41 states that at the hearing the complainant indicated he had been provided with the information requested at items 1) - 5) and 7). These were therefore excluded from further consideration. With regard to the remaining requests, the Tribunal found that section 14(1) of FOIA had been misapplied by the Council and therefore ordered it to reissue a new response that did not cite the exclusion.
5. The Council's response fulfilling the step ordered by the Tribunal was provided to the complainant on 22 January 2015. The Council informed the complainant that the estimated cost of complying with the requests would exceed the appropriate costs limit under section 12 of FOIA. It considered that the requests were very broad in scope or failed to identify to a sufficient extent the information being sought. The Council therefore advised that the complainant would need to clarify his requests in order to bring the costs of compliance within the appropriate limit.

6. On 12 February 2015 the complainant wrote to the Council and asked it to reconsider its position in light of the points now raised. Despite further reminders, the complainant did not receive a response and therefore he submitted a complaint to the Commissioner.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way a number of his information requests had been handled.
8. The complainant has confirmed that in order to ease the burden on the Council he was prepared to vacate requests 2) and 11) - 15). He has, however, asked the Commissioner to consider the Council's position with respect to the remaining requests.
9. As part of his investigation, the Commissioner has informed the complainant that he did not have the authority to make a determination on requests 1) - 5) and 7). This is because, as mentioned above, the First-tier Tribunal on EA/2014/0210 had reviewed the requests in question and had in essence determined that they had been disposed of for the purposes of the legislation. The Tribunal therefore excluded these requests from its order to the Council that obliged it to issue a fresh response. Insofar as the Tribunal's ruling did not require the Council to take any action, the Commissioner considers it would be beyond his legal powers to incorporate these same requests into any formal decision now.
10. The Commissioner's investigation has therefore focused on requests 6) and 8) - 10). In initially writing to the Council in respect of these points, the Commissioner noted the Council's failure to complete an internal review and said that for completeness one should be carried out. This was done and the outcome of the review sent to the complainant and the Commissioner on 18 September 2015.
11. The Commissioner's analysis of the Council position with respect to requests 6) and 8) - 10) is set out in the body of this notice.

Reasons for decision

Request 6)

12. The original request made to the Council asked for the disclosure of the Council's "insurance claims spread sheet (with personal data redacted)

and details of your Enquiries and Complaint's system (ECS) pertaining to the location." The Council has explained that it no longer uses ECS but that it does have an insurance claims spreadsheet. The complainant has verified that he only requires details for road traffic accidents at the location.

13. The Council has informed the complainant that historic information held on the Insurance Claims database is classified not by road traffic accidents but by carriage or footway defect and if the damage was to a person or property. With regard to the location in question, the Council initially advised that there were three relevant entries, one in 2006 and two in 2010. Upon a further review carried out in response to the Commissioner's investigation, a fourth entry was discovered. The Council released the summary information relating to the incidents contained in spreadsheet format but was not prepared to release the personal data of the individuals involved in the incidents. It also redacted details of all other entries not connected to the location specified in the request.
14. The complainant accepts that any personal data captured by the request can be withheld. He considers, however, that the Council could anonymise the information while still disclosing a greater level of detail from the relevant entries in the Insurance Claims spreadsheet.
15. Where a request is made for information that contains personal data which should not be released, it is incumbent on a public authority to adopt an approach that will maximise the amount of information that can be disclosed while protecting any details that could lead to the identification of an individual.
16. The Commissioner has been provided with a copy of the Insurance Claims spreadsheet, which was the focus of the request, and agrees with the Council that the extent of the detail contained therein is limited. The Council has explained that additional claim details would be held by the insurers - information that is not covered by the request and which, according to the Council, would not be held for the purposes of the legislation in any event.
17. Having compared the database against the description of the information that has been provided, the Commissioner accepts that the Council has disclosed all of the information set out in the database entries for the location that does not constitute personal data. Accordingly, the Commissioner has decided that the Council has complied with the request.

Request 8)

18. The request asks for confirmation of 'How many times requests for compensation for damage are met, how many are denied, what legal action has been taken and the results of those legal claims.' The Council considers that the request engages section 12(1) of FOIA. This provides that a public authority can refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit'.
19. The Council outlined in its internal review the reasons for finding that the estimated cost of complying with the request would exceed the appropriate limit. Its explanation is reproduced below:

In determining and locating the information within Highways only it emerged that it would be necessary for all the enquiries made on the Highways system, Confirm, to be checked for details of subsequent requests or claims for compensation. In the last 10 years, 57,000 enquiries relating to Highways, Waste and Parking issues have been logged. Each logged enquiry has a text field and may also contain relevant documents. So 57,000 logged enquiries would need to be reviewed in order to extract the requested information. We have been advised that it would take approximately 10 seconds to review each record to retrieve and extract the relevant information in order to answer your question. We estimate that it would then take 158 hours to complete the task [...]

20. Where a public authority refuses a request under section 12(1) of FOIA, it must have regard to section 16 which states 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. In terms of the advice and assistance that may be provided, paragraph 14 of the Code of Practice issued under section 45 of FOIA (the section 45 Code of Practice)² states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

[...] should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

focussing their request, information may be able to be supplied for a lower, or no, fee."

21. Should a public authority satisfy the requirements of the section 45 Code of Practice, it shall be deemed to have complied with section 16 of FOIA.
22. Acknowledging the duty to provide advice and assistance, the Council went on to provide the following guidance as part of its internal review letter:

To assist you in reducing this question to come within the time and costs limits, I asked the Highways Department to advise how this could be done. Highways advised that the real issue with this question is that damage to vehicles and subsequent requests for compensations does not just arise from Highways but also when other H&F services under their own activities, for example, housing, waste management, parking and parks activities. Potential defects caused by assets managed by Highways include trees, street lighting, signage, street furniture and structures, such as Hammersmith Bridge. Therefore to answer the above question fully would require H&F to gather information from not only Highways but also the services responsible for all of the above. A further layer of complexity is where defects may be caused by non-council services, such as utilities works.

To enable your request to come with [sic] the time and cost limits cited by section 12 of the FOIA, please advise H&F of a narrowed request using the information provided above.

23. The complainant has expressed dissatisfaction with the level of advice and assistance offered by the Council to bring the request within the appropriate cost limit. Notwithstanding this, the complainant has indicated that he would be prepared to narrow the request to "what legal action has been taken and the results of those claims."
24. A clarified request would technically represent a new request for the purposes of the legislation and would need to be dealt with accordingly. To this extent, the complainant would be required to submit any revised request to the Council as he would do with any information request. In advance of the complainant potentially making the revised request, however, it was agreed that the Commissioner would make a determination on whether the Council had complied with section 16 of FOIA.

25. The Commissioner's guidance on section 12³ explains at paragraph 59 that in cases where it is reasonable to provide advice and assistance, the minimum a public authority should do in order to satisfy section 16 is: either indicate if it is not able to provide any information at all within the appropriate limit; or provide advice and assistance to enable the requester to make a refined request. The Council considers it has fulfilled its section 16 obligation here by providing an indication of what information could be provided within the cost limit.
26. The question for the Commissioner is whether the guidance provided by the Council represents a level of advice and assistance sufficient to discharge the duty imposed by section 16 of FOIA. The Commissioner's guidance states that, as far as reasonably possible, a public authority should inform the requester of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus. Advising requestors to narrow their requests without indicating what information a public authority is able to within the limit, will often just result in requesters making new requests that still exceed the appropriate limit.
27. The Commissioner has informed the Council of the complainant's preparedness to narrow the request and invited it to assess whether the clarification was likely to bring the request under the cost threshold. If not, the Commissioner asked the Council to consider whether there was any further guidance that could be provided to assist the complainant.
28. The Council considers that restricting the request to the legal action that has been taken would not bring it within the cost threshold. It explains that it would still be required to review its software system, Confirm, in order to extract the relevant information. The Council suggests that the complainant would need to provide a set of time-parameters which would permit this search to be undertaken. Using the Highway department's calculation that 57,000 entries would need to be considered, and combining this with the finding that it would take approximately 10 seconds to review each request/enquiry, the Council calculated that it would take (on average) 15.8 hours to review one year's worth of information. For completeness, the Council also advised that some of the information provided in response to request 6 would have provided information relevant to the request.

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

29. When considering the application of section 16, it is necessary to bear in mind that the requirement to provide and assistance is qualified by the words "only in so far as it would be reasonable to expect the authority to do so." This is significant because to expect too much of a public authority, and particularly the amount of work it would need to undertake to provide the appropriate level of advice and assistance, would to some extent weaken the protection afforded by section 12 of FOIA.
30. In this case the Commissioner accepts that the contextual information provided by the Council as part of the internal review does help illustrate the difficulties of compiling and extracting the requested compensation information. The Commissioner, however, also considers that the explanation fails to indicate to a sufficient specificity the way in which the complainant could potentially narrow his request. To this extent, the level of advice and assistance provided would not meet the requirements of section 16 of FOIA.
31. This, in the Commissioner's view, contrasts with the Council's final response. This does not simply recommend that the complainant narrow his request. Rather, using the calculations relied on to support the section 12 estimate, the Council has suggested to the complainant ways in which he could consider restricting his request to bring it within the costs threshold.
32. The Commissioner considers that the later response appropriately engages with the request by providing tailored advice and assistance. Accordingly, the Commissioner does not require the Council to take any further steps.

Request 9)

33. The request asked for the disclosure of "internal training documents or policy details and protocols concerning the role and responsibility of LBHF's insurance officers." The complainant later explained that in order to simplify the handling of the request, the Council should consider clarifying its position in respect of whether an insurance officer would be expected to prepare residents' insurance claims.
34. In response to the request, the Council disclosed a copy of the job description for a Senior Insurance Officer, which it explained is the role responsible for managing the relevant part of the service. In an effort to resolve the issue, the Council stated that the Highways department undertook a further check to see if it held any other information linked to the individual who handled the complainant's insurance claim. This resulted in the disclosure of the contemporaneous job description for the Maintenance Support Officer.

35. Importantly, the Council has provided the following statement in respect of the one outstanding item identified by the complainant, namely the question of whether an insurance officer would be expected to prepare residents' insurance claims:

No further information is held by H&F. H&F would also like to take this opportunity to confirm that we do not prepare claims or provide advocacy against the Council. Insurance and Highways specialists are in post to investigate legal liability claims against H&F.

36. In view of the job description information that has been disclosed, and taking into account the clarification provided by the Council, the Commissioner is satisfied that the Council does not hold additional recorded information relating to point of dispute raised by the complainant.

Request 10)

37. The request asked "Please therefore disclose all emails and correspondence concerning the problem of residents having access to emergency service keys for the location and concerning vehicles driving into the bollard." For illustrative purposes, the way in which the position in respect of the request developed is outlined below.
38. The Council initially informed the complainant that the request is broad and therefore it would need him to limit the scope of the information required. In this regard, the Council suggested that the complainant may want to specify the corresponding parties in order to concentrate the searches that would need to be carried out for information.
39. In correspondence leading to the internal review being carried out, the complainant explained why he was requesting the information and, in response to the advice given by the Council, asked for the disclosure of "all information regarding the issues of the keys and accidents and incidents at the location. [A named individual] should be able to help."
40. The Council replied on 28 August 2015 by stating that the clarification did not narrow the request but actually expanded it. It went on ask the complainant to provide the following categories of information so that "we can then request the search and assess how long it would take to disclose the requested information as your revised, expanded search may take in excess of 18 hours":
- *Types of information, eg emails, letters and case files*
 - *Time-line for which the requested is held, eg 01 January 2010 – 31 December 2014*

41. In the Council's internal review it referred to previous correspondence in which it had indicated that clarification of the request would be required and explained that in any event exemptions in Part II of FOIA would be likely to apply. The Council further referenced the nature of the clarification needed, set out in the letter of 28 August 2015, and stated the request had not been answered as the relevant information had not been provided by the complainant.
42. The complainant subsequently informed the Commissioner of his dissatisfaction with the way that the request had been handled. Broadly, the complainant argued that the original request was clear in asking for "all emails and correspondence" concerning the problem of residents having emergency keys. He therefore disputed the Council's suggestion that complying with the request would exceed the costs limit in section 12 of FOIA. Furthermore, even if section 12 of FOIA was found to be engaged, he considered it was the Council's responsibility to provide tailored guidance on the way that the request could potentially be refined. The Commissioner therefore returned to the Council and asked it to respond in more detail on both points, namely (1) the way in which the Council had established that compliance would exceed the appropriate limit, and (2) the possibility of providing further advice and assistance to the complainant.
43. The Council responded as follows:

Where does the Council consider any relevant (information) is likely to be held (for example, by a particular department and, or in a certain database)?

The relevant information is likely to be held on Confirm [software that logs service requests] and on the H&F Email Archive Service (EAS), all within Highways but the Housing department may also hold such information as they also have emergency keys. The Environment, Leisure and Residents Services department also has road and footway assets requiring those keys.

In what format is the information likely to be stored?

The information requested is likely to be mixed from paper copies of worksheets, written correspondence and emails, spreadsheets held in unstructured shared drives, site notes and officer diaries plus the structured data on the Confirm database. The bulk of the requested information is likely to be held in the EAS and Confirm. Some of the officers involved as far back as 2010 have now left H&F and these email archives will also need to be searched.

What search terms would the Council need to employ in order to carry out a comprehensive search?

With regard to Confirm, the following terms could be used "barriers", "fire", "keys" and "emergency". As part of estimating the amount of time it would take to extract relevant information from Confirm [...], the Highway's department has estimated it to take 10 seconds to determine whether a service request on Confirm contains the relevant information, they also expect the above search terms to retrieve a large number of enquiries, many of which will not always be obvious as they get a lot of enquiries with multiple service requests [...]

With regard to searching the emails, Highways undertook a sample search of an individual officer's emails with the following results:

- *searching for 'fire barrier' 5560 emails retrieved*
- *searching for 'barrier key' 6780 emails retrieved*
- *search for 'gate key' 8020 emails retrieved*
- *searching for 'fire gate' 7180 emails retrieved*
- *searching for 'emergency gate' 10,000 emails retrieved*
- *searching for 't bar' 10,000 emails retrieved*
- *searching for 'Tbar' 9 emails retrieved*

The sample test estimated it to take one minute to scan the email contents for this one officer and this [sic] take over 792 hours to determine whether they [sic] any of the requested information

Is the Council able to concentrate its searches by focusing on the location referred to in the request and, or the particular nature of the problem identified? If not, why not?

Yes, this is possible.

Has a sampling exercise been carried out?

A sampling exercise has been carried out as part of engaging the section 12 exemption for request 7, with regard to Confirm, and also the sample email search provided in the 3rd [section of the response]

The Council's internal review does inform [the complainant] that he could refine his request by confirming the types of

information he requires and specifying the date parameters for the request. However, in accordance with our guidance, the Council should consider whether it could take a more pro-active approach and indicate what information could be provided within the appropriate limit.

H&F could request a work package request from our ICT provider, HFBP, to search all emails in the EAS and documents held shared drives for all former and current officers within Highways, Housing and ELRS. The results of which would give H&F an idea of how much information needs to be reviewed ahead of extraction, etc. However this is a substantial piece of work. To date, H&F have not received any clarification from [the complainant] in the manner suggested.

Furthermore, H&F have already answered that Emergency Service Keys are not given to residents at all so there is a likelihood that all of the above work will find nothing. The instance cited by [the complainant which prompted the request] may or may not have occurred but if it did, it is highly unlikely that there will be an official record as it would constitute a breach of council policy and practice. The Highways Department has suggested that a local resident with an illegitimately obtained key to the barrier may have unlocked the T-bar and left it in the down position. Unfortunately these keys can be obtained from locksmiths and as a result some residents open fire barriers to use the emergency access lane as a cut through. To address this issue, H&F have now replaced a number of T-bar fire barriers with anti-vandal gates.

44. Having reviewed the explanation, the Commissioner advised the Council that it was not clear why the search terms used had not been linked with the incident location; a function that the Council had confirmed was possible. This specification had been made in the request itself and it was submitted that the act of refining the search could significantly reduce the number of search returns. The Council's response to this observation is set out below:

HFBP are having issues running the agreed search on the file servers. They have run a few searches on a couple of file servers but found that we were not returning any matches. The main problem is that they are trying to search all file shares on these servers and the number of files and folders are huge (in the region of 2 million objects). As a result the searching would take at least a week to complete.

The other issue is the inability to combine the search terms like they can do in EAS (the search archive). For example, HFBP have

not been able to search for 'fire barrier' and '[the name of the road on which the incident occurred]' as one search and this is trying to use the file search facility within Treesize.

45. The Commissioner's task is to determine whether the request engages section 12 of FOIA and, like request 8), whether the Council has provided an adequate level of advice and assistance. His analysis of these issues follows.
46. Section 12(1) of FOIA allows that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The authority should, however, confirm to the applicant that it holds the requested information if this is known. Section 12(2), on the other hand, provides that a public authority does not have to deal with the substance of a request if a public authority
47. The Council has not specifically referenced the distinction between section 12(1) and section 12(2) with a view to identifying the subsection that would apply. The Commissioner notes, however, that the Council did indicate that it was unlikely to hold any information captured by the request. On this basis, the Commissioner considers that the relevant provision needing to be considered is section 12(2) of FOIA.
48. The appropriate limit referred to in section 12 is specified by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations")⁴. The appropriate limit is set at £600 for central government departments, legislative bodies and the armed forces and £450 for all other public authorities, which includes the Council.
49. The Fees Regulations state that an estimate can only take into account the costs a public authority reasonably expects to incur in: determining whether it holds the requested information; locating the information; retrieving the information; and, extracting the information. The Fees Regulations further clarify that the costs associated with these activities should be worked out at a standard rate of £25 per hour, per person.
50. A public authority seeking to apply section 12 does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner's guidance explains at paragraph 22 that what amounts

⁴ http://www.legislation.gov.uk/uksi/2004/3244/pdfs/uksi_20043244_en.pdf

to a reasonable estimate can only be considered on a case by case basis. In saying this, reference was also made to the decision of Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2007/0004, 30 October 2007)⁵, which said that a reasonable estimate is one that is “sensible, realistic and supported by cogent evidence” (paragraph 12).

51. The guidance goes on to explain that a sensible and realistic estimate is one which is based on the specific circumstances of the case. In other words, it should not be based on general assumptions, for example, that all records would need to be searched in order to obtain the requested information when it is likely that staff in the relevant department would know where the requested information is stored. This, the Commissioner advises, does not mean that a public authority has to consider every possible means of obtaining the information in order to produce a reasonable estimate. An estimate is unlikely to be reasonable, however, where an authority has failed to consider an absolutely obvious and quick means of locating, retrieving or extracting the information.
52. The Commissioner recognises in this instance why the complainant should feel frustrated by the Council’s insistence that it is not able to comply with the request. The request itself only asks for information relating to a small geographical area and therefore, on the face of it at least, it might be assumed that the process of recovering any relevant information would be straightforward. The Commissioner, however, has ultimately decided that the Council’s estimate that compliance would exceed the appropriate limit is reasonable in the circumstances. Three main factors have informed this determination.
53. Firstly, an important consideration pertains to the terms of the request itself, which asks for *all* emails and correspondence relating to the issue. This opens up the scope of the request to a significant extent and the Council has explained that three departments - Highways, Housing and ELRS – could potentially hold information. It is possible, of course, that the complainant is only seeking the subsection of information that will be useful to him in any future proceedings. This though is not reflected in the wording of the request, an objective interpretation of which must be acted on by the Council. Secondly, the Council has explained that the search function linked to the record servers other than EAS are unable to link in a straightforward and convenient way the geographical location

⁵ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i136/Randall.pdf>

with the search terms used to identify relevant information. While the limitations of the search function are unfortunate in this situation and perhaps surprising, the Commissioner considers that the Council (or at least its contractors) will be best placed to understand the strengths and weaknesses of its software. Thirdly, the Commissioner considers that the Council's position is strengthened by the fact that it has carried out specific exercises to gauge the difficulty of locating any information held.

54. As mentioned above, a public authority considering whether complying with a request would exceed the appropriate limit does not have to consider every possible means of obtaining information. Instead, the critical test is whether the public authority's approach is logical in the circumstances. In this case, the Commissioner considers that this test is satisfied and therefore section 12(2) of FOIA is engaged. He has therefore gone on to consider next the duty to provide advice and assistance imposed by section 16 of FOIA.
55. Returning to paragraph 14 of the section 45 Code of Practice which refers to advice and assistance and fees, a public authority relying on section 12 will normally be expected to consider providing help on the way that an applicant could reform or re-focus his or her request. It is difficult though to envisage how the Council could provide anything other than the generic advice provided about the possibility of narrowing the scope of the request. This is because the Council considers it is unlikely that it would hold information captured by the scope of the request, which would weaken its ability to provide specific directions on the way in which the complainant could clarify his request. To this extent, the Council's explanation that the information is unlikely to be held could in itself represents a form of advice and assistance. Flowing from this, the Commissioner considers that the Council's explanations regarding the way in which its estimate has been calculated, which are reproduced above, may help the complainant decide what to do next in terms of the possibility of making a new request.

Right of appeal

56. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

57. 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.
58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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