



Tribunals Service
Information Tribunal

Case No: EA/2006/0093

**IN THE MATTER OF AN APPEAL TO THE INFORMATION TRIBUNAL
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Determined at an Oral Hearing on 13th June 2007
Promulgation date: 13 July 2007

BEFORE THE INFORMATION TRIBUNAL

**Peter Marquand, DEPUTY CHAIRMAN
Jacqueline Blake and Jenni Thomson, LAY MEMBERS**

B E T W E E N :

MR WILLIAM R URMENYI

Appellant

v.

THE INFORMATION COMMISSIONER

Respondent

and

LONDON BOROUGH OF SUTTON

Additional Party

Representation:

For the Appellant in person (in writing)

For the Respondent: Mr Akhlaq Choudhury, Counsel

For the Additional Party: Mr Damien Welfare, Counsel

DECISION

The Tribunal dismisses the Appeal for the reasons set out below. The Tribunal has concluded that the Information Commissioner's conclusion in the Decision Notice that the London Borough of Sutton could not deal with Mr Urmenyi's request within the appropriate limit was correct, but for different reasons.

REASONS FOR DECISION

Background

1. The central facts of this case concern issues over Penalty Charge Notices (PCN) issued by the London Borough of Sutton. In

particular, PCN's issued on the 1st January 2005 and in the preceding 6 months. If a PCN is issued, then the motorist has 14 days to write to the London Borough of Sutton ("the Council") to object to the issuing of the PCN. The Council may accept the appeal and therefore no fine has to be paid or else reject those representations, in which case the fine must be paid.

The Request for Information

2. Insofar as it is relevant to this appeal, Mr Urmenyi's request for information on the 5th April 2005 was;

"I wish to know how many first stage appeals, against PCN's issued on New Year's Day, were received by the Parking Services. By first stage appeals, I mean those initial appeals that are made before the penalty rises from £40 to £80.

Please also tell me how many first stage appeals were made, on average, against PCN's issued other Saturdays over a period of 6 months excluding any Saturdays, which coincide with public holidays."

3. By letter dated the 12th April 2005, Mr Malcolm Simms, the then Head of Parking Services, replied to Mr Urmenyi refusing to provide the information. The relevant text is as follows:

"It is not possible to automatically interrogate the penalty charge database to establish on a penalty charge notice issue date basis whether we have had representations, and at what stage they were received. To determine this information will involve manually checking each individual entry on the data base on the relevant dates.

We estimate that in order to locate, extract and amalgamate the information requested would take more than 18 hours to complete, and would take the cost of providing the information above the "appropriate limit" of £450 as set out in the Act. We therefore exercise our right not to supply this information in accordance with section 12 of the Act."

4. By email dated the 13th April 2005 Mr Urmenyi applied to the Council for a review of that decision. By letter dated the 6th June 2005 from Chris Reid, Executive Head of Environmental Sustainability, the Council again refused to provide the information stating:

“From my discussion with Mr Simms, Parking Manager, it is clear that the IT system used by Parking Services cannot be interrogated to provide the data that you seek. The only way of providing the data would be to carry out a manual search of records. This would also include the need to check notebooks to identify why fixed penalty notices were cancelled. Notices may be cancelled for a variety of reasons other than appeals – for example where notices are spoilt or the vehicle drove (sic) away.

I therefore regret that your request for information submitted by email on the 5th April cannot be met within the cost limits set under the Freedom of Information Act of £450. To obtain the data you requested would require the physical examination of approximately 4000 records and correlating them with the Attendant’s note books. The computer system does not have the capacity to provide the information.”

5. By email dated the 26th January 2006 Mr Urmenyi applied to the Information Commissioner (“the Commissioner”) for a determination of whether or not the Council had applied the Freedom of Information Act (FOIA) properly. The Commissioner, in a Decision Notice dated the 11th December 2006, concluded that the Council was correct in its reliance upon section 12 of FOIA namely that the appropriate limit would have been exceeded in order to provide the information requested. However, the Commissioner concluded that the Council had failed to fulfil its duty to provide advice and assistance to Mr Urmenyi under section 16 of FOIA. The Commissioner’s conclusion was that there were two parts to Mr Urmenyi’s request of the 5th April 2005. The first part related to information concerning the number of first stage appeals against PCN’s issued on the 1st January 2005 and the second part related to the number of first stage appeals on the preceding six months worth of Saturdays. Mr Urmenyi ought to have been advised that the first part could be answered within the appropriate limit, but not the second. Following discussions between the Commissioner and the Council, the information requested in the first part of his request was provided to Mr Urmenyi on the 22nd November 2006.

The Appeal to the Tribunal

6. Mr Urmenyi appealed to the Tribunal on the 14th December 2006. The Tribunal joined the Council as an Additional Party. The appeal was to be determined on the papers but in the light of materials provided by the Council, the Commissioner applied for an oral hearing. On the 26th April 2007 the Tribunal ordered an oral hearing and that the Council provide witness evidence concerning

terminology and how it had estimated the length of time it would have taken to respond to Mr Urmenyi's request.

7. Having initially wanted to attend the oral hearing, Mr Urmenyi informed the Tribunal and the parties that he would not do so. The Tribunal was satisfied with the reasons that Mr Urmenyi gave for his absence and he provided detailed written submissions, which the Tribunal took into account at the hearing on the 13th June 2006.
8. The Tribunal was provided with a bundle of documents. The Tribunal also had witness statements from Mrs Donna Ashby, who has been head of Parking Services since April 2006 in place of Mr Simms, and Miss Wendy Sheen, who in 2005 reported to Mr Simms and is now Business Support Manager in Parking Services. Mrs Ashby and Miss Sheen also gave oral evidence to the Tribunal.

The Issues

9. At a Directions hearing on the 20th February 2007 the Tribunal identified the issues in the appeal as follows:
 - a. Whether the Commissioner was given sufficient information by the London Borough of Sutton to conclude that the Council was entitled to rely upon the cost limit provided for by section 12 FOIA;
 - b. Whether the Commissioner erred in his analysis of the information provided by the London Borough of Sutton in concluding that the costs limit provided for by section 12 FOIA applied to this request;
 - c. Whether the Commissioner erred in concluding that there was no obligation on public authorities automatically to split any request they received into different elements and consider whether they could comply with any of those elements within the section 12 costs limit;
 - d. Whether the Commissioner erred in failing to take any action against the London Borough Sutton for their failure to comply with their duty under section 16 FOIA.

The Tribunal's Jurisdiction

10. The Tribunal's remit is governed by section 58 FOIA and this is set out below:

"58- Determination of Appeal.

(1) If on an appeal under section 57 the Tribunal considers –

- a. That the Notice against which the appeal is brought is not in accordance with the law, or*

b. To the extent that the Notice involves an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the Notice in question was based.”

11. The starting point for the Tribunal is the Decision Notice of the Commissioner but the Tribunal also receives evidence, which is not limited to the material that was before the Commissioner. The Tribunal, having considered the evidence (and it is not bound by the strict rules of evidence) may make different findings of fact from the Commissioner and consider the Decision Notice is not in accordance with the law because of those different facts. Nevertheless, if the facts are not in dispute, the Tribunal must consider whether FOIA has been correctly applied.

Relevant law

12. Section 12 FOIA states:

“(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.”

13. The “Appropriate Limit” is then set out in the “Freedom of Information and Data Protection (Appropriate Limited and Fees) Regulations 2004” (the Regulations”) and these state at Regulation 3(3) that for a Public Authority, such as the Council, the appropriate limit is £450.

14. Regulation 4 states:

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

- (a) determining whether it holds the information,*
- (b) locating the information, or a document which may contain the information,*
- (c) retrieving the information, or a document which may contain the information, and*

(d) extracting the information from a document containing it.

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

15. The references to £450 and £25 are not references to the fees that may be charged to an applicant for information nor are they references to the actual costs or rate of pay of any member of staff. They provide a mechanism for calculating the time that represents the appropriate limit. In this case £450 divided by 25 represents 18 hours. However, the public authority is not entitled to take into account all activities that might be required to provide an applicant with information, but only those set out in Regulation 4(3) a-d, namely determining whether the public authority holds the information, locating it, retrieving it and extracting the information from any document. Those assessments are subject to a test of reasonableness. Therefore, if a Public Authority, such as the Council, estimates that it would take longer than 18 hours to perform the four activities set out in Regulation 4(3), then it may claim the exemption in section 12 and does not have to supply the information that is sought.
16. It is clear from the wording of section 12 that it is for the Council to estimate whether the appropriate limit would be exceeded. The estimation is for the public authority to take based on the estimates of the times for the individual activities allowed to be included by the Regulation 4. The Commission and the Tribunal can enquire into whether the facts or assumptions underlying this estimation exist and have been taken into account by the public authority. The Commission and Tribunal can also enquire about whether the estimation has been made upon other facts or assumptions which ought not to have been taken into account. Furthermore, the public authority's expectation of the time it would take to carry out the activities set out in Regulation 4(3) a-d must be reasonable.

Terminology

17. During this request for information there has been confusion over the terminology used by the Council. In this Decision, unless otherwise stated or set out in quotations from documents, any correspondence from a motorist to the Council following the issue of a PCN is referred to as a “Representation”. Any correspondence from a motorist to the Council following the issue of a PCN that seeks to have the PCN cancelled before the charge for the PCN

rises at day 14 from £40 to £80 is referred to as a “First Stage Appeal (FSA)”. Any appeal to the Parking and Traffic Appeals Service is referred to an “Appeal”.

New computer software and hardware

18. A further complicating factor in the process of this request for information is that in June 2006 the Council had a new server installed to deal with the electronically held information that is relevant to this Appeal. In addition, at the time of Mr Urmenyi’s request for information the Parking Services used software called “Parking Office for Windows” (POW). On the 11th April 2006, according to Mrs Ashby, the system was upgraded and changed to “Parking Gateway”. Why this is relevant will become apparent below.

Stages in coming to an estimate

19. The oral evidence given to the Tribunal by Mrs Ashby made it clear that there were three stages to be undertaken in order to obtain the information sought by Mr Urmenyi.
 1. First, the number of PCNs issued for the day in question had to be identified (“the First Stage”). Miss Sheen confirmed in evidence that POW could not carry out this search for more than one date at a time. If the Council wanted to collect the number of PCNs issued on 24 Saturdays then 24 separate enquiries would have to be made of the computer system.
 2. POW did not record whether or not a motorist had made a FSA. Mrs Ashby and Miss Sheen confirmed that this data was not separately recorded. Therefore, in order to screen out those PCNs where there had been no FSA, it was necessary to identify those PCNs where there were Representations (which may or may not be an FSA) and those where there was not (which would definitely mean there was no FSA). This is “the Second Stage”.
 3. As no separate record of any FSA is kept in order to identify whether a Representation was an FSA it was necessary under POW (and still is under Parking Gateway) to read any correspondence attached to a particular PCN in order to identify whether it amounted to an FSA (“the Third Stage”).

Parking Office for Windows

20. Miss Sheen helpfully set out how POW operated. The first action would be to carry out a search for the relevant day. This would produce a front screen that listed the first PCN in the total number for the day. By clicking on a button in the bottom right hand corner,

it was possible to move through the different PCNs that had been identified as being issued on that day. In order to identify whether a motorist had sent in Representations it was necessary to click on a button in the bottom left hand corner entitled "correspondence". This opened up another screen; this produced a list which, if there was correspondence from a motorist, would include the date on which such correspondence had been received. However, it would not identify who that correspondence was from or its content. In order to do this it was necessary to view the actual piece of correspondence by clicking on the scanned image, when it would be opened to become capable of being read. Once that activity had been undertaken it was necessary to go back to the front screen and click to the next case and then repeat the process.

Issue (a) - Sufficiency of information provided to the Commissioner

21. In oral evidence to the Tribunal Miss Sheen said that she recalled Mr Simms giving her a piece of paper with the date of the 1st January 2005 and six months' worth of preceding Saturdays on it and asking her how long it would take to identify the number of appeals. It should be noted here that we cannot be sure at this stage whether what was being referred to were in fact Representations, FSAs or Appeals as defined by the Tribunal in paragraph 17 above. In any case, Miss Sheen told Mr Simms that there were 4,704 PCNs which would have to be looked at individually to establish if an appeal had been made. She told him it would take 30 second to look at each one of those in order to establish whether there was correspondence, and if there was correspondence, about 4-5 minutes to read any letter. She also said it would take 40 minutes to put the information obtained into a spread sheet.
22. The Commissioner's Decision Notice was based upon various pieces of correspondence with the Council. The conclusion was that there would be an average of 80 PCNs with correspondence for each of the Saturdays in the six month period and that it would take 5 minutes per PCN to establish if it had been appealed. The Commissioner, basing his calculations on there being 4,000 records for the relevant period concluded that it would take 160 hours to extract the data needed to meet the request and therefore the appropriate limit was appropriately claimed (it will be remembered that the appropriate limit is 18 hours).
23. In a response to the Commissioner, Annette Merton, Executive Head of Business Services, provided Mr Slee of the Commissioner's office, with the estimate of 5 minutes to review each piece of correspondence. In response to Mr Slee on the 28th July 2006, Mrs Ashby who, at this point, was now head of Parking Service in place of Mr Simms, responded to questions that had been put to her by Mr Slee of the Commissioner's office. In

response to the question "*Roughly, how many of the 83 tickets would you expect to be appealed?*" Mrs Ashby replied "25-30". In her oral evidence Mrs Ashby explained that she did not know how she had come to that figure and said "*there was a mistake made there*". Part of the issue here may be the varying terminology used by the Council. Mrs Ashby said that she could not have been thinking of Appeals as in oral evidence she stated that only about 1% of those FSAs that are rejected go on to be such Appeals.

24. In answer to a question "*how time consuming was it to arrive at this figure of 83 tickets? Is this figure held on a database or were manual records searched?*" Mrs Ashby answered: "*approximately 1 hour ...*". In oral evidence Mrs Ashby said that this was a rough estimate based on running the POW system, but that she thought it was probably an underestimate. However, she deferred to Miss Sheen as it was she who was used to using the system and had provided the estimate.
25. Mrs Ashby also provided some written answers to questions that were filed as part of this appeal following the directions given by the Tribunal that the parties should lodge witness statements. The document was not in the form of a witness statement, but in oral evidence Mrs Ashby confirmed that she had completed the document. In response to the question about how many FSAs had been made against PCNs on New Year's Day 2005 she replied: "*... 83 penalties with appeals (representations)*". However, in oral evidence Mrs Ashby confirmed that at the time of drafting this response she did not know that they were in fact FSAs, she had in fact only identified that there were 83 Representations (i.e. 83 PCNs with correspondence). In answer to a further question in the same document about how many FSAs were made over the six month period prior to the 1st January 2005, the response was: "*Over a period of six months 4704 PCNs (approx) 1-2 hours work were issued in Saturdays during the six month period. To check how many had first stage appears – each record 30 seconds = (2,352 mins).*" However, again in oral evidence Mrs Ashby stated that her estimate of 30 seconds referred to how long it took to check whether each PCN had correspondence on it, not how long it took to read each piece or correspondence to determine whether or not it was an FSA (i.e. the "Third Stage").
26. The Tribunal's conclusion on the correspondence leading up to the Commissioner's Decision Notice, and even on the response to this Appeal, is that the Council has not consistently applied the definitions of the stages referred to in paragraph 17 above and not consistently applied time estimates and the Commissioner was not provided with sufficient information. However, the Tribunal wants to make it clear that it does not believe that there is any suggestion of dishonestly or improper conduct on behalf of the Council and, in particular, on behalf of Mrs Ashby or Miss Sheen. It is simply

something that they found difficult to deal with. Accordingly, the Tribunal does not find it possible to rely upon any of the written materials that have been submitted and has based its conclusions on the evidence provided at the oral hearing.

The total number of records

27. In oral evidence and in her witness statement, Miss Sheen said that there were 4,704 PCNs however, Mr Welfare (counsel for the London Borough of Sutton) conceded that this was too many and in fact represented seven months' worth of Saturdays and not six months. His submission was that the correct number was 4,266. However, as we have already stated above, the Decision Notice was based on 4,000, which was based on information provided originally by the Council. Mr Urmenyi's outstanding request is, in itself, open to some interpretation about which precise Saturdays are included. We do not think it is necessary to be as precise as the Council urge us to be as this is a process of estimation and we are going to proceed on the basis that 4,000 is the correct figure to use.

Issue (b) - The average number of FSA and the Commissioner's analysis of the information provided by the Council

28. It is convenient to look at the estimates of time for identifying the information sought by Mr Urmenyi with reference to the three stages identified by Mr Welfare, referred to in paragraph 19 above. Mrs Ashby, in her oral evidence, stood by her estimate that it would take one hour to identify the number of PCNs issued on the Saturdays other than the 1st January 2005 identified by Mr Urmenyi. However, in her evidence she deferred to Miss Sheen as being in a better position to help the Tribunal on all issues in respect of the POW. However, Miss Sheen in evidence said that it would take about 10 seconds to establish the number of PCNs for each of the Saturdays. Miss Sheen pointed out that she would have to record the total number on a piece of paper, as the computer system did not allow a cumulative list of the PCNs for each Saturday requested to be kept open on the screen. In other words, each set of Saturdays had to be looked at independently. Nevertheless, assuming that there are 24 Saturdays to be looked at (excluding those relating to a Bank Holiday). The total time taken for the First Stage would only amount to 240 seconds.
29. In relation to the Second Stage again, Mrs Ashby deferred to Miss Sheen. In her statement Miss Sheen said that it would take 30 seconds to inspect each of the records on the POW to establish whether or not it had relevant correspondence. In oral evidence Miss Sheen stated that she tested the 30 second estimate that she had given on the new system, which was in her view faster than the

old one. It had taken 20 seconds to carry out this task, but in her view it was approximately 10 second faster than POW. Miss Sheen confirmed that she timed this using her watch. Miss Sheen accepted that it might not have been exactly 20 seconds on each occasion, perhaps 18 seconds and that she had rounded up to 20 seconds. However, Miss Sheen also accepted that the timing with her watch had only been carried out on the first case and not for subsequent cases. In other words, it included the time that it took for various programmes to load in order to view the particular information. She accepted that in relation to the new system it would have taken a couple of seconds to look at subsequent cases and identify whether they had correspondence attached to them. However, in relation to POW she was not able to say how long it would have taken to look at subsequent cases but was of the view that it would be slower.

30. At this point, it is worth pointing out that Miss Sheen's evidence was that POW was a significantly slow programme and that on occasion the whole system would "crash" i.e. the screens would freeze and it would be necessary to start all over again. However, Miss Sheen was not able to say that it was likely that the system would crash during the searches that were to be undertaken, but that this was a regular occurrence.
31. In relation to the Third Stage, namely actually reading correspondence, Miss Sheen's estimate was that it took 4-5 minutes to read the correspondence to establish whether or not the correspondence actually was a FSA. Miss Sheen said that sometimes it was not clear until the end of the correspondence that in fact it was an FSA. However, she accepted that in fact it was not necessary to read all of the correspondence in detail to determine whether or not it was an FSA. First, any correspondence received 14 days after the issuing of the PCN would not be an FSA. Secondly, Miss Sheen accepted that there was no need to read each individual letter in detail but only to look at the initial part of the letter and the end of the letter in order to determine whether it was an FSA. In those circumstances, her view was that an estimate of two minutes for each piece of correspondence would be sufficient to determine whether or not it was an FSA.
32. In order to establish how many of the 4,000 PCNs would have FSAs it is necessary to estimate the percentage that would represent FSAs. In the original Decision Notice the Commissioner had relied upon the percentage calculated from the 1st January 2005. In fact, this was potentially erroneous because at that time the Council did not actually know that the 83 representations amounted to FSAs, but by good fortune for the Council, they are now able to say that they did. Miss Sheen said that she had taken a particular day, namely the 3rd December, and for the purposes of

this appeal, inspected the correspondence and established that 20% was the proportion of PCNs that amounted to FSAs.

33. It was accepted in evidence by Miss Sheen that the 1st January was a higher proportion at 30%.
34. It was also accepted in oral evidence by Miss Sheen and by Mrs Ashby, that approximately 1% of the Representations did not amount to FSAs.

The submissions

35. Mr Welfare's submissions on behalf of the Council were that 30 seconds was a reasonable estimate and that taking that time alone for the Second Stage, the appropriate limit was exceeded at 33½ hours. However, his submission was that, although the Council could not prove absolutely where the 5 minute estimate originally came from, it was still a reasonable estimate. The old system was slower, it would take two minutes to find correspondence on the new system, it might be necessary to look at parking attendants' notebooks and also there was the possibility of bringing in temporary staff to carry out the task. Mr Choudhury's submissions for the Commissioner were that the whole process was to be estimation. It was not a statistical analysis of all data. It was not necessary to calculate the precise number of seconds and that a moderate degree of accuracy was required, something in the order of plus or minus 5 seconds and there was no call for a greater degree of accuracy, which would be unrealistic.
36. Mr Choudhury's submission continued that on that basis, 30 seconds was not unreasonable for the Second Stage and based on 4,704 records, the time taken would be far more than the appropriate limit. Mr Choudhury also submitted that 5 minutes was not unreasonable for the Third Stage to look at whether or not there was an FSA by reading the correspondence. This is the case in particular because of the number of records involved.
37. Mr Urmenyi's written submissions, which were considered by the Tribunal at the hearing, were essentially that it was unbelievable that reviewing these records would take so long. A lot of Mr Urmenyi's calculations relied upon the evidence that Mrs Ashby had given, referred to in paragraphs 21-26 above. However, as we have already said, it is simply not possible to rely upon any of that material. Mr Urmenyi's submissions can be summarised as follows:
 - (i) It is not reasonable to rely on New Year's Day for the 1st January 2005 as that was an exceptional day in that a lot of people assumed that parking would be free because it was New Year's Day.

- (ii) Mr Urmenyi's view was that 10.7% of PCNs issued would be appealed. However, as we have said above, this was based upon unreliable information provided by the Council.
- (iii) It would only take 43 seconds on each case where there was correspondence, to establish whether or not it was an FSA (the Third Stage). Again, this was based on previous information provided by the Council, which the Tribunal has already found to be unreliable.
- (iv) In relation to reviewing each records, (i.e. the Second Stage) Mr Urmenyi's view was that 2 seconds would be required.

38. The Tribunal's conclusions on the evidence are as follows. The Tribunal agrees with Mr Urmenyi's general submissions, to the extent that the times initially provided by the Council were inaccurate estimates as they did not take into account the circumstances in which the estimates had been arrived at. We are not clear why the period of one hour was arrived at in relation to the First Stage. Miss Sheen was clear that it would only take 10 seconds for each Saturday that had to be looked at and we can only presume that the figure of one hour was arrived at because of confusion amongst the different individuals concerned about what information was being asked for. In any event, the Tribunal is satisfied that in order to establish the total number of PCNs in relation to the Saturdays prior to the 1st January 2005 an appropriate estimate would be 240 seconds or 4 minutes. Clearly there would be some extra time here whilst that number was written down and it would not be possible to do each search immediately following the other. Nevertheless, that should not add much more time. We do not find it necessary to say exactly how much, but the Council's original estimate for this part of locating the information was unreasonable.

39. In relation to the timings of the Second Stage, we again find that the Council was in error because it had not sufficiently considered what Miss Sheen had actually estimated. Miss Sheen had estimated the time that it took to look at the first record, which was going to take longer than each subsequent record because of the need for various programmes to be "loaded up" when looking at the first PCN. Subsequent inspection would have been quicker, although the Tribunal is of the view that given the number of records there would have been some flexibility as it is not reasonable to expect 4,000 to be inspected at exactly the same time and as efficiently at the end of the process as at the beginning. The Tribunal notes that Miss Sheen had actually timed the process on the new system and although it is not possible to conclude that the POW would have "crashed" or to establish exactly how much time it would have taken under the POW, bearing in mind the extra steps needed in the POW to look for correspondence and the number of records that would have to be looked at, we are of the view that something in the region of 15 seconds would be an

appropriate estimate to review each record to identify whether or not it had correspondence.

40. In relation to the Third Stage, the Tribunal is of the view that the Council was in error in not questioning Miss Sheen further about her estimate of five minutes. The Tribunal's conclusion is that it is not necessary to look at each piece of correspondence in its entirety to establish whether or not it is an FSA, and to this extent we agree with Mr Urmenyi. However, Miss Sheen's evidence was that it would take approximately two minutes to look at the correspondence for this purpose. This was her evidence and we think that the Council should have taken into account the fact that she was initially considering that it was necessary to read all of each letter and not simply consider whether or not it amounted to an FSA. Therefore, that aspect of her evidence was an irrelevant consideration for the Council.
41. As to the percentage of PCNs that are subject to FSA, the Tribunal's conclusion is that the reasonable estimate to take is 20%. The Council and the Commissioner erred in relying upon the 30% to the 1st January 2005 as it was an exceptional day, but Mr Urmenyi's calculation of 10.7% is based on figures that cannot be relied upon and is an under-estimate. In our view the best evidence upon which an estimate can be compiled is Miss Sheen's review of the 3rd December, namely 20% of PCNs were appealed. Again, it is our view that the Council took into account irrelevant material based on an exceptional day, namely the 1st January 2005.
42. Taking all of the above into account, the Tribunal's conclusion is that the First Stage would have taken something in the region of 4-6 minutes. The Second Stage would have taken something in the region of 15 seconds per record, which comes to 16 hours and 40 minutes. Out of the 4,000 PCNs, 800 would have been FSAs, which would have taken something in the order of 26 hours and 40 minutes to review for the Third Stage. The totality therefore does exceed the appropriate limit.
43. In conclusion therefore, although it is the Tribunal's view that the Council erred in not questioning the estimate that had been given, it is the Tribunal's view that even if they had taken into account the relevant facts, the appropriate limit would still have been easily exceeded.
44. Mr Urmenyi, in his submissions, raised various other matters which, for completeness, we deal with:
 - (i) Mr Urmenyi questioned whether querying the database using "SQL query language" would have been faster. Whilst the Tribunal did not have any evidence before it about what "SQL" meant, it was clear that the Council did not in fact

have any other method of querying their database other than the one described above.

- (ii) The Tribunal agrees with Mr Urmenyi that it does not seem relevant to examine the notebooks of parking attendants. The evidence was that some PCNs were cancelled by parking attendants on the spot, or otherwise invalidated. Those might appear as PCNs on the database but should not properly be counted. It seemed to the Tribunal that those were irrelevant to the estimations that were provided and would not have made any material difference.
- (iii) The Council initially said that it would take 40 minutes to put the data requested by Mr Urmenyi into a spreadsheet. Mr Urmenyi said that a spreadsheet was not necessary and the Tribunal has not found it necessary to consider this given the fact that the conclusions are that the appropriate limit is, in any event, easily exceeded.
- (iv) The PCN fine automatically increases at day 14 from £40 to £80. However, if an FSA has been made the potential fine remains at £40 until the outcome of the FSA. Mr Urmenyi's submission was that it must, therefore, be possible to search on those PCNs where the fine did not increase at day 14. Miss Sheen and Mrs Ashby explained this was not possible as the deferment of the increase from £40 to £80 was put in manually to POW. In addition, there were various reasons for a deferment, not just an FSA. The Tribunal's conclusion is that this would not have helped in identifying the information sought.

45. Mr Urmenyi has made various allegations that various members of staff have not told the truth in the course of this appeal and in the course of other proceedings. The Tribunal wants to make it clear that the Tribunal was satisfied that those who gave evidence before it did so honestly and to assist the Tribunal as best they could. It is the Tribunal's view that a lot of the confusion has arisen out of differences in terminology and individuals not understanding what was being referred to by others when requesting information, due to confusion over that terminology. The Tribunal found no reason to suspect dishonesty or a deliberate attempt to mislead anybody.

Issue (c) - Are Public Authorities obliged to consider each component part of a request for the purpose of determining whether each part exceeds the cost limit?

46. The Commissioner's submissions were that there was no obligation to divide up a request for the purposes of determining whether it exceeded the appropriate limit. The "Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations"

provided for the aggregation of requests and to split up requests that were similar would render this part of the regime defunct. The Council supported the Commissioner's submissions. Mr Urmenyi did not address this in his skeleton argument.

47. The Tribunal's conclusion is that where more than one request relates to the same or similar information, there is no obligation on a public authority to "split up" a request and answer each piece individually. To do so would defeat the purpose of the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004 No. 3244. It may be a different matter for a single document that includes requests for different sorts of information. However, this is where the duty to provide advice and assistance under section 16 of the FOIA comes into play and a public authority ought to provide such advice and assistance to clarify the nature of the request and determine what information might be provided.
48. The Tribunal does not find that the Council was under an obligation to divide up Mr Urmenyi's request in relation to six months worth of Saturdays preceding the 1st January 2005, but we do find that there was an obligation to provide advice and assistance.

Issue (d) - Whether the Commissioner erred in failing to take any action against the Council for its failure to comply with its duty under Section 16 FOIA

49. The Commissioner's submissions were that as the Council provided the information in relation to the first part of the request, there was no need to go any further in relation to the duty to provide advice and assistance. The Council apologised to the Tribunal for not having provided the advice and assistance and stated that, as it had provided the information in relation to the first part of the request, there was nothing more that needed to be done. The Tribunal's conclusion is that it would have been open to the Commissioner to require the Council to provide further advice and assistance to Mr Urmenyi. It might have been possible for the Council to provide information not relating to six months worth of Saturdays, but for a shorter period that could have been dealt with within the appropriate limit. It might have been possible for the Local Authority to provide an estimate, as opposed to an exact number of FSAs. However, this is all academic as the facts are now over two years old. Shortly before the hearing, the Council offered to provide Mr Urmenyi with the information in order to try and prevent the appeal from going ahead, but Mr Urmenyi has not accepted that proposal and wishes the appeal to proceed. There would be no purpose in requiring the Council to provide advice and assistance at this stage and therefore we do not do any more than note that in our view, the Council should have provided further advice and assistance.

CONCLUSION

This Appeal is dismissed. The Information Commissioner's conclusions in the Decision Notice that the London Borough Sutton could not deal with Mr Urmenyi's request within the appropriate limit was correct, although the Tribunal has come to this finding on different facts and for different reasons.

Signed

Peter Marquand
Deputy Chairman
13 July 2007