

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

11 December 2008

**Public Authority:** Office of Fair Trading  
**Address:** Fleetbank House  
2-6 Salisbury Square  
London  
EC4Y 8JX

### Summary

---

The complainants requested information from OFT regarding its investigation into credit card default charges. OFT explained that it held the requested information but to provide it would exceed the appropriate cost limit under section 12 'cost limit'. The Commissioner found that OFT was entitled to aggregate the cost of responding to the request under section 12(4) of the Act and that OFT correctly relied upon section 12(1) as a basis for not providing some of the information. However, the Commissioner found that in failing to inform the complainant that the information requested in part 1 of the request is not held OFT breached the requirements of section 1(1)(a). OFT also breached the requirements of section 1(1)(b) and section 10(1) by failing to disclose the information requested in parts 2 and 4 of the request within twenty working days of the request. In addition, the Commissioner found that OFT did not provide adequate advice and assistance in accordance with the requirements of section 16(1).

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

---

2. The complainants have advised that on 17 May 2007 they made the following request for information to the Office of Fair Trading (OFT)

*"1. How many OFT staff and / or man hours were dedicated to the credit card investigation?"*

*2. On what date was the decision made to begin an investigation into these charges? Who made that decision? Please supply the advice recommending an investigation and documentation that confirms this decision, redacting any information that you feel is exempt.*

*3. Please supply the document outlining advice / recommendations provided to you or others in senior management about agreeing to a £12 investigation limit, redacting information that you feel is exempt.*

*4. On what date did the investigation begin?*

*5. How many complaints did the OFT receive about credit card default charges in the 24 months prior to taking the decision to investigate? Please provide this by month or quarter, whichever is easier. If information for that period is not available, please supply the number of complaints over whatever period featured in your consideration.*

*6. How many complaints did Consumer Direct receive about credit card default charges in the 24 months prior to taking the decision to investigate. Please provide this by month or quarter, whichever is easier. If information for that period is not available, please supply the number of complaints over whatever period featured in your consideration.*

*7. How many complaints have been received by the OFT and Consumer Direct about the credit card default charges since the OFT's announcement that £12 is the threshold for action? Of these, how many relate to charges in excess of that threshold? (The Unfair Contract Terms Regulations place a duty on the OFT to consider complaints it receives so please explain why it did not consider taking action sooner).*

*8. Please give dates of external meetings held during the course of the investigation and who attended. This is not a request for details of discussion at these meetings. If you feel individual persons cannot be named then I am happy to receive a list of organisations attending each meeting.*

*9. Please give dates of correspondence between the OFT and those credit card lenders you were consulting with.*

*10. Please provide any models used by the OFT to calculate that £12 should be the threshold for action. This is not a request for any information supplied by the credit card lenders to populate the model.*

3. OFT responded on 21 June 2007 explaining that it was unable to provide the information requested as to do so would exceed the cost limit at section 12 of the Act. In the alternative OFT informed the complainants that the information was also exempt under sections 36, 41, 42, 43 and 44.

4. The complainants requested an internal review on 25 June 2007, raising a number of questions regarding the application of the exemptions to each of the information requests. The complainants also clarified that in relation to question two, they did not need to know the name of the person who took the decision but were happy to refine their request to ask for the position of the person taking the decision.
5. OFT responded on 19 July 2007 informing the complainants that at the time the decision was made to investigate credit card default charges, the OFT Chairman delegated the authority to make decisions about which cases to open / sectors to challenge, to deputy branch director and branch director levels. The decision to investigate credit card default charges was therefore taken at those levels.
6. OFT completed its internal review on 31 July 2007. OFT provided to the complainant some general information regarding the number of complaints received but explained that there is no specific category for credit card default charges under the category of credit cards in its records. OFT also disclosed the date the decision was made to begin the investigation. OFT went onto uphold the application of section 12 to the remaining requested information and the application of sections 36, 41, 42, 43 and 44 in the alternative.
7. In a letter to the complainant's dated 1 August 2007 the OFT supplied to the complainant the information requested in part 2 of the request. This information was redacted of information the OFT found to be outside of the scope of the request and under section 31(1) of the Act.

## The Investigation

---

### Scope of the case

8. On 6 August 2007 the complainants contacted the Commissioner to complain about the way their requests for information had been handled. The complainants specifically asked the Commissioner to consider the application of section 12 as well as the other exemptions applied.
9. During the course of the investigation the Commissioner established that the information requested in parts 2 and 4 of the request had been disclosed to the complainant at the internal review and in a letter dated 1 August 2008. The information disclosed to the complainant falling within the scope of part 2 was redacted by OFT as it found that some of the information (i) didn't relate to the request (ii) was exempt under section 31(1). The complainant did not ask the Commissioner to investigate the validity of these redactions. Therefore the Commissioner did not consider the redactions OFT made in respect of requests 2 and 4.
10. The Commissioner also established that the OFT were relying on sections 12(1) to withhold all the remaining information on the basis of section 12(4) as the

request was 8 requests from the same person of a single set of closely related information and could therefore be aggregated.

11. The Commissioner's investigation has focused on determining if the OFT applied section 12(1) to parts 3, 5, 6, 7, 8, 9 and 10 and to determine if the OFT complied with the requirements of section 16(1) of the Act 'duty to provide advice and assistance'. The Commissioner also considered whether the information requested at part 1 was held.

## Chronology

12. The Commissioner began his investigation by writing to OFT on 10 April 2008. The Commissioner asked OFT for further details regarding the application of section 12 to all the withheld information, and for further explanation regarding its application of the other exemptions.
13. OFT responded on 15 May 2008. It clarified that it was only relying on section 12 to withhold the requested information. OFT explained that it had included references to other sections of the Act which might have become relevant if the complainants had wished to refine their request. As the complainants had not refined their request, it was only relying on section 12.
14. In relation to part 2 of the complainant's request for:

*"On what date was the decision made to begin an investigation into these charges? Who made the decision? Please send the advice recommending an investigation and documentation that confirm this decision, redacting any information that you feel is exempt"*

OFT provided the Commissioner further detail on the background to the decision being made, the dates the decision was made and who was involved in the decision. OFT explained that at the time of the request and internal review it was not aware of the existence or location of the requested information (i.e. advice recommending an investigation), however, subsequently documents relevant to this part of the request had come to its attention. OFT confirmed that, as requested by the complainant, it had supplied this information to the complainant redacted of information it felt did not fall within the scope of the request or is exempt under section 31(1), this was done by letter on 1 August 2008. The complainant did not query the redactions made from these documents.

## Findings of fact

15. The information being withheld to which the complaint refers is the information requested in parts 3, 5, 6, 7, 8, 9, and 10. OFT have aggregated the requests and treated all parts of the request as one request and argue that to provide this information would exceed the appropriate cost limit under section 12(1) of the Act.
16. In April 2006 the OFT carried out an investigation into the fairness of standard terms in credit card contracts imposing charges for defaults, including failure to

pay on the due date, exceeding a credit limit and failure to honour a payment made.

17. The complainants request to the OFT relates to OFT's investigation and not to an investigation specially instigated by the complainants or relating to the complainants.

## Analysis

---

### **Procedural matters: Section 1(1) (General right of access) and Section 10(1) (Time for compliance with request)**

18. Section 1(1) states that any person making a request for information to a public authority is entitled to (a) be informed in writing by the public authority whether it holds the information and (b) to have that information communicated to him. Section 10(1) states that a public authority must comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt of the request.
19. The OFT disclosed to the complainant information requested in relation to parts 2 and 4 of the request. The information requested in part 4 was disclosed during the internal review dated 31 July 2007 along with some of the information requested in part 2. During the course of the Commissioner's investigation further information was located falling within the scope of part 2 of the request and this was then disclosed to the complainant. All the information relating to part 2 of the request has now been disclosed subject to redactions.
20. The Commissioner finds that in failing to disclose the information supplied in parts 2 and 4 of the request within 20 working days OFT breached the requirements of section 1(1)(b) and section 10(1) of the Act.
21. During the course of the investigation OFT also explained to the Commissioner that no information was held falling within the scope of the part 1 of the request. At part 1 the complainant asked how many staff and/or man hours were dedicated to the credit card investigation. OFT explained that the investigation into credit card default charges was undertaken by its consumer protection departments such as legal and finance. During the relevant period there were no time recording requirements or systems in place which would have recorded the information requested. In addition, according to OFT its consumer protection department undertakes a programme of works across a number of sectors and those who would have been working on the investigation into credit card default charges would have been working on a range of cases.
22. OFT stated it may be possible to estimate how many staff and man hours were involved from the files (paper and electronic) but that this would firstly require the identification of the names of those who created, received and considered the documents or were involved in making the decisions; and secondly an estimation of how much time each individual invested in conducting the task. OFT stated that

this may result in it being able to estimate the number of staff and man hours involved but it could not confirm this.

23. As set out above, OFT explained that it may be able to estimate the number of staff and man hours by integrating its paper and electronic files, however, the actual number of staff and or man hours involved could not be provided as this information is not recorded. Nor could this information be gleaned as a result of a calculation of collated recorded information which is held.
24. The Commissioner accepts that OFT might be able to extract some information from its paper and electronics files which would enable it to *estimate* the number of staff or man hours which may have been involved. However being able to make an educated guess as to the likely number of staff and man hours involved is not the same as being able to provide the *actual* recorded information requested. OFT did not record anywhere the staff or man hours involved in working on the credit card default charges investigation. Nor did OFT record any other information which would allow it to calculate the actual number of staff and man hours involved. As such the Commissioner accepts that the requested information was not recorded by OFT and it is therefore not held. By failing to inform the complainants that this information is not held OFT breached its obligations under section 1(1)(a) of the Act.

## Section 12 (Cost Limit)

25. Section 12(1) provides that 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. 12(2) states that 12(1) does not exempt the public authority from its obligation to comply with section 1(1)(a) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
26. The Appropriate Limit and Fees Regulations 2004 set a limit of £600, the equivalent to 24 hours at a rate of £25 per person per hour, to the cost of complying with a request for all public authorities subject to the Act and listed in Schedule 1, Part I. In estimating the cost of complying a public authority can take the following into account:
  - determining whether it holds the information requested,
  - locating the information or documents containing the information,
  - retrieving such information or documents, and
  - extracting the information from the document containing it.

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

27. Section 12(4)(a) states that where two or more requests for information are made to the public authority by one person the estimated cost of complying with any of



the requests is taken to be the estimated total cost of complying with all of them. The Fees Regulations expand on this and state that requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to the same public authority;
  - they must be either from the same person, or from 'different persons who appear to the public authority to be acting in concert or in pursuance of a campaign' (section 12(4)(b) of the FOI Act);
  - the requests must relate to the same or similar information; and
  - they must have been received by the public authority within a space of 60 consecutive working days
28. OFT argue that the information requested by the complainants is a request for a single set of closely related information and that therefore the 8 outstanding requests could be considered as one. The Commissioner notes that this approach was explained to the complainant in the refusal notice of 21 June 2007 and in light of this the OFT invited the complainants to refine their request.
29. In considering section 12(4) and the Fees Regulations, the Commissioner accepts that OFT were entitled to rely on 12(4)(a) to treat the requests as a request for a single set of closely related information and that the 7 outstanding requests could therefore be considered as one. He therefore notes that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
30. OFT explained to the complainants how the requested information is held. It stated that the information it holds which falls within the scope of the request consists of a large quantity of minutes and notes of advice, internal memoranda, e-mails, meetings notes and letters held in both paper files and electronically. It stated that there are at least 26 paper files and of these at least 23 contain correspondence with credit card issuers, British Bankers Association, related internal OFT papers and some complaints made to OFT. At least 2 files exist that contain mainly internal OFT papers and OFT notes of meetings with other bodies. It also explained that at least 1 folder exists of correspondence with the OFT's external advisor which contains advice from him. OFT told the complainants that all of these files are organised chronologically and, where applicable, by reference to the organisation concerned. OFT explained that each of the 26 files contain approximately 200 pages giving a total of 5200 pages. OFT stated that even if it were possible to review these pages at a rate of 400 pages per hour, it would take one member of staff 13 hours.
31. OFT explained that most of the information requested is held in the paper files as outlined above (requests 1-4 and 9-11). However some of the information may also be held electronically (such as emails of advice falling within part 3 of the request) and other information is only held electronically (such as complaints made to Consumer Direct).
32. In addition OFT explained that providing the information in parts 5, 6 and 7 would in itself exceed the appropriate limit because there is no discrete category for

'credit card default' charges on the OFT's complaint systems or on the Consumer Direct database. Rather information relating to credit card default charges on those systems is held under many different categories including 'fees', 'charges' 'credit cards' and under individual credit card providers names. Further analysis of all those complaints recorded in each subcategory would be needed to establish how many are about default charges. OFT state that it has recorded 524 enquiries or complaints in 2005 under the sub category of credit cards, 540 in 2006 and 114 to date in 2007. OFT estimate that the review of each individual category of complaints alone would take longer than 24 hours. The complainants, in their request for an internal review, declined to refine their request but instead asked OFT to review its application of section 12.

33. During the course of the investigation OFT provided to the Commissioner a breakdown of the work it felt would be required to provide the complainant with the information requested by reference to each individual part of the request. The Commissioner notes that as OFT have validly aggregated the 7 requests he must therefore determine if complying with section 1(1) in relation to one (or more parts) of the request exceeds the cost limit. Should responding to one or more parts of the request exceed the cost limit then all outstanding parts of the request can be validly refused under 12(1).

### **Section 12(1)**

34. Parts 5 to 7 of the request was for statistics on complaints received by OFT and Consumer Direct about the credit card charges and the £12 investigation limit. OFT confirmed that raw data required to provide the information requested does exist but that this information is not in an accessible form. OFT explained that Consumer Direct is a national telephone advice line separate from but managed by OFT. Further OFT explained that Consumer Direct received 1.7 million complaints and enquiries in 2006 and both Consumer Direct and the OFT employ electronic recoding systems that can manage the numerous complaints received on a vast array of matters.
35. According to OFT there is no discrete category for credit card default charges on either of their systems. The OFT only allows for complaints to be recorded under the heading 'financial' with a subcategory of 'credit cards', these categories are used to record all complaints and enquiries about credit cards and not just those that relate to default charges. Consumer Direct has several further categories where relevant complaints may have been recorded about the issue e.g. unfair terms, fees, charges, credits cards (under individual card issuer's names). To locate and retrieve the statistics requested OFT would need to search all of these categories. OFT explained that these searches would bring up hundreds of other complaints in these categories which would then need to be individually analysed to locate and retrieve the information requested.
36. OFT estimates that searching for and retrieving the information requested from all available OFT databases, including Consumer Direct would take in excess of 27 hours. Consumer direct receives the vast majority of complaints and enquiries and a minority are received directly by OFT.



37. In order to support this position OFT explained that to establish the number of complaints received by Consumer Direct there are some searches that could be carried out in an attempt to source contacts within the Consumer Direct database (i.e. enquires as well as complaints) relating to credit card default charges. It explained that to demonstrate the time it would take to obtain the information requested it had attempted to complete some searches for 2006:
- Searching the Consumer Direct database (CDB) under the Product Goods and Services Code "Credit Cards" and the Complaint Type "Default and Termination" sourced 12 contacts but not all will relate to credit card default charges.
  - Searching the CDB under Product Goods and Services Code "Credit Card" and the keyword "fee" in the Case and Contact note for 2006 sourced 53 contacts but not all related to credit card default charges.
  - A general search of all Credit related Complaint Types and Products Goods and Services Code "Credit Cards" sourced 61 contacts not all relating to credit card charges.
  - The widest possible search was to search all Complaint Types by the Product Goods and Services Code "Credit Cards". This search sourced 598 contacts which then need to be opened and reviewed in order to identify which of those related to credit card default charges followed by a manual count.
38. OFT explained that there are several ways of sourcing contacts relating to credit card default charges none of which will give a definitive figure of the actual number of complaints recorded by Consumer Direct because of the way they may have been classified. According to OFT the classification assigned will depend on what the advisor believed was the crux of the complaint as the advisor can only record one Product Goods and Services Code and one Complaint Type on the database even where there is more than one aspect to the complaint. Therefore, to ensure that it had provided the complainant with all the relevant information additional searches would need to be undertaken as a complaint under a seemingly unrelated different Product Goods and Services Code and complaint type may also contain a complaint about credit card default charges.
39. For example, a search would also need to be done against all the credit card company names to which complaints have been received to ensure all complaints had been sourced. Therefore to provide an accurate figure of all complaints received relating to credit card default charges to Consumer Direct in the period specified a review of complaints in all other categories would also be required to determine whether any elements of those complaints relate to credit card default charges. This is because the complaint could have been categorised into any number of categories again depending on the officer's view as to the crux of the complaint. Not all complaints regarding credit card default charges would therefore necessarily have been input under the same category. For example a complaint may be received which references credit card default charges as well as the interest rate charged. The person who receives the complaint would need to determine what category to list the complaint under. As there is no category specifically for credit card default charges this complaint could be listed under either fee, the company's name or terms and conditions. According to OFT even

if it were possible to review these complaints at 100 per hour it would likely take in excess of 27 hours given that Consumer Direct received 1.7 million enquiries alone in 2006.

40. OFT went onto explain that to obtain the number of complaints received by OFT a number of searches under different variables would also be necessary to obtain the information from its internal electronic systems (as different from Consumer Direct). The first parameter would be:
- Date opened between x and y
41. OFT stated it would then have to carry out each of the following individual searches:
- **Legislation area equals Unfair Terms in Consumer Contract Regulations**
  - **Legislation area equals Consumer Credit Act and Sub Category equals APR and Credit Charges**
  - **Complaint Type equals Credit and Complaint Sub-type equals Default and Terminations**
  - **Business Area equals Financial- Hire and Unsecured Credit and Business Description equals Credit Cards.**

OFT stated that this would narrow the searches, but it would then need to undertake a manual check of each individual case recorded to ascertain if the complaint was actually related to credit card default charges. OFT argued that the examples above, set out only some of the searches that would be required in order to ensure all possible complaints relating to credit card default charges were identified.

42. The Commissioner asked OFT whether any statistics were reported at the time of its credit default charge investigation. OFT explained that it was not aware of any statistics being recorded or reported on at the time. OFT also submitted that as these cases were taken under the Enterprise Act 2002 using the Unfair Terms in Consumer Contract Regulations, the evidence it required was in the form of the terms and conditions the credit card issuers were using. It therefore did not have to rely on evidence from consumers to provide proof of breaches of this legislation.
43. Part 8 of the request relates to the dates of external meetings, part 9 pertains to the dates of correspondence and part 10 to any working model used to calculate that £12 should be the threshold for an investigation. OFT explained that in order to find this information it would require an analysis of its manual files and electronic information. OFT have explained that it has 26 papers files, of these 2 files exist containing mainly internal OFT papers and notes of meetings with other bodies, 1 folder exists of correspondence with the OFT's external advisor and the remaining files are organised chronologically by reference to the credit card company concerned. Each of these files contains approximately 200 pages. In relation to the information requested in part 8, 9 and 10 (dates of meetings / dates of correspondence and details of the working model used) the Commissioner

recognises that in light of the description of the file names (i.e. that there is a file containing mainly correspondence and one containing notes of meetings), it may be possible for OFT to focus its search for the information request within a smaller group of folders rather than all 26.

44. However, on the basis of the information provided by OFT at paragraphs 34-44, the Commissioner accepts that for OFT to locate, retrieve and extract the information requested in part 5, 6 and 7 of the request would exceed the appropriate limit under section 12(1). As OFT has validly aggregated all 7 remaining parts of the request, the Commissioner has therefore not gone on to consider further the other parts of the complainant's request.

### **Section 12(2)**

45. At part 3 of the request the complainant asked for information outlining the advice /recommendation provided which agreed to a £12 investigation limit. OFT explained that it is unaware if such a document exists and that to establish if it does it would need to review all its paper and electronic files. OFT stated that, as explained in paragraph 46, to search all its files to establish if such a document exists, would exceed the appropriate limit. The Commissioner notes that the reference to a £12 investigation limit refers to the decision by OFT to only investigate complaints where the amount charged for credit card default charges by the credit card company exceeded £12.
46. The Commissioner has not considered the validity of the argument in relation to 12(2) and part 3 of the request as he has found that OFT validly aggregated all seven requests and to locate, extract and retrieve the information requested in parts 5, 6 and 7 of the request alone would exceed the appropriate limit under section 12(1).

### **Section 16(1) (Advice and assistance)**

47. 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. Section 16(2) sets out that any public authority which, in relation to the provision of advice and assistance in any case, conforms with the Code of Practice under section 45, is taken to have complied with the duty imposed by 16(1) in relation to that case.
48. The Commissioner notes that the section 45 Code of Practice states that where an authority is not obliged to comply with a request for information because, under section 12(1) the cost of complying would exceed the appropriate limit the authority 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-focussing their request, information may be able to be supplied for a lower, or no, fee.
49. OFT explained to the complainants in its refusal notice dated 21 June 2007 that it has a duty to provide them with advice and assistance as set out in section 16(1)

of the Act. In light of this OFT provided the complainants with further assistance to help them refine their request and bring it within the relevant cost limits (as detailed in paragraphs 28-29)

50. OFT provided an explanation as to how the requested information is held such as the paper files and electronic records but did not provide an indication as to what could be provided within the cost limit or provide a breakdown of how the cost limit would be calculated to comply with 1(1)(a) and (b) for each individual part of the request.
51. The Commissioner considers that in the circumstances of this case, as a result of the explanations provided to the Commissioner, it would have been reasonable for OFT to provide the complainants with such a breakdown in order to meet the requirements of section 16(1). As the Commissioner considers it was relatively easy for OFT to provide a breakdown to him on the work needed to comply with 1(1)(a) or (b) for each part of the request he therefore considers that the OFT could have providing an indication to the complainants as to what information could be provided within the cost ceiling. Therefore it is clear to the Commissioner that OFT did not confirm to the section 45 Code of Practice and in failing to do so in this case he considers OFT to have breached the requirements of section 16(1) of the Act.

## The Decision

---

52. 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:
  - (i) OFT was entitled to aggregate all 7 remaining parts of the request, under section 12(4) of the Act.
  - (ii) OFT correctly applied the cost limit under section 12(1) of the Act.
53. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - (i) OFT breached section 1(1)(b) and section 10(1) in failing to disclose the information requested at parts 2 and 4 of the request within twenty working days.
  - (ii) OFT breached the requirements of section 1(1)(a) in failing to inform the complainant that it does not hold information in relation to part 1 of the request
  - (iii) OFT did not provide advice and assistance in accordance with the requirements of section 16(1).

## Steps Required

---

54. In line with its duty contained at section 16 of the Act, the OFT should contact the complainant promptly and in any event no later than 35 calendar days from date of this Notice and provide further advice and assistance as outlined in paragraph 52 in order to assist the complainant's in clarifying their requests. Having received a refined request OFT should either provide the complainant with the information requested in line with its duty under section 1 of the Act or provide the complainant with a refusal notice compliant with section 17 of the Act.

## Right of Appeal

---

55. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 11 day of December 2008**

**Signed .....**

**Nicole Duncan  
Head of FOI Complaints**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex

### 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.”

**Section 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

## **Time for Compliance**

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

### **Exemption where cost of compliance exceeds appropriate limit**

**Section 12(1)** provides that –

“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.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 12(3)** provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5)** – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

### **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”.