

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 November 2009

Public Authority: Lancashire Constabulary
Address: Police Headquarters
Saunders Lane
Hutton
Preston
PR4 5SB

Summary

The complainant wrote to the public authority in July 2006 seeking information regarding two police Operations. The public authority stated that section 30(1) applied. In the course of the Commissioner's investigation the public authority stated that it wished to rely upon section 12 of the Act, which applies when the costs of responding to a request exceeds the 'appropriate limit'. The Commissioner agrees that section 12(1) can be applied in this case. However, he does find procedural breaches of sections 16(1), 17(1), 17(1)(b), 17(5), 17(7)(a) and 17(7)(b). He requires no remedial steps in this case.

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.

Background

2. The information requested related to the outcome of two major police Operations in Lancashire during 2006. The initiation of these Operations had been the subject of considerable local publicity and the complainant wanted to know the outcome.

The Request

3. On 10 July 2006, the complainant wrote to the public authority asking for information about two police Operations, "Engage" and "Fruition". He asked the following fifteen questions:

"

- i) *The date of the start and the date of closure of Operation Engage and Operation Fruition*
- ii) *The reason for the initiation of these operations*
- iii) *The number and seniority of the officers engaged in these operations*
- iv) *The number of children and/or parents interviewed with respect to these operations*
- v) *The total number of children, ages and number of each ethnicity of the children involved*
- vi) *The number of individuals interviewed whom the Lancashire Police identified as a person who may have committed, or may be about to commit, an offence against a child*
- vii) *The ages and number of individuals of each ethnicity that have been interviewed with regard to possible offences against children*
- viii) *Were the persons interviewed with regard to possible offences against children interviewed as individual (sic) acting on their own or were they interviewed in the context of being part of an organised group engaged in systematic exploitation of children?*
- ix) *How many individuals have been arrested, cautioned, or charged with offences relating to these operations and what is the ethnicity of these individuals?*
- x) *How many children involved in these operations have been placed on Protection Orders and how many have been placed in the care of the local authority?*
- xi) *How many of the individuals who have been sent 'warning letters' have been interviewed by police?*
- xii) *How many ongoing cases do you have that are currently under investigation that involve situations similar to those involved in Operations Engage and Fruition?*

- xiii) *What contacts have you made with the West Yorkshire Police to discuss the similarities of this situation in East Lancashire, to their own Operation Parsonage?*
 - xiv) *How many individuals have you interviewed, arrested or charged with regard to 'Internet grooming', and what are the numbers of each ethnicity?*
 - xv) *Were the persons interviewed with regard to 'Internet grooming' interviewed as individual (sic) acting on their own or were they interviewed in the context of being part of an organised group engaged in systematic exploitation of children?"*
4. On 10 August 2006 the public authority replied stating that it was not possible to release any information at that time. It stated that Operation Engage was still ongoing and that section 30 of the Act applied. The public authority stated they were unable to establish at the time of writing whether or not Operation Fruition had been finalised. The public authority confirmed that if it transpired that the Operation had been terminated, they would reconsider the 15 questions and respond accordingly.
5. The complainant replied the same day asking for an internal review. The complainant wrote again on 11, 14, and 17 August 2006 restating the request and asking for confirmation of receipt, which had not been provided by the public authority.
6. The public authority replied on 27 September 2006 with the outcome of the Internal Review. The public authority stated that the initial, incomplete, reply had been sent, mindful of the 20 day limit for replies (which in any event, the public authority failed to meet). It drew the complainant's attention to the fact that some of the requested information had been the subject of a press release. The public authority confirmed that it still regarded the remaining information as exempt under section 30, but this time quoted the sub-section, (1). It failed to specify which particular part of section 30(1) applied. The public authority no longer relied upon whether or not the Operations were active as supporting grounds, but provided alternative reasons. This time, the public authority confirmed that a public interest test had been applied, and that it held that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. The letter failed to confirm that the complainant had the right of appeal to the Commissioner.

The Investigation

Scope of the case

7. On 26 October 2006, the complainant contacted the Commissioner to complain about the way their request for information had been handled. The complainant specifically asked the Commissioner to consider the use of section 30(1) as the

- grounds for refusal. The complainant believed that the public interest test had not been applied appropriately, but rather had been used as a generic reason for non-disclosure.
8. During the period this case was under investigation, the complainant made further information requests to the public authority. As a consequence of these requests some of the information that was the subject of this complaint was supplied to the complainant. Further written answers to outstanding questions were also supplied to the complainant during the course of the Commissioner investigation. The public authority did not specify whether these answers constituted the provision of relevant recorded information or whether the questions had been answered by asking the staff involved in the two operations.
 9. The complainant has confirmed to the Commissioner that the requests that remain outstanding in relation to operation Engage are questions *vi*, *vii*, *viii* and *ix* and that the requests that remain outstanding in relation to operation Fruition are questions *v*, *vi*, *vii* and *viii*. The complainant stated that regardless of his acceptance that only the questions detailed above remain unanswered, he still wished the Commissioner to make a decision about whether the public authority's application of section 30 at the time of his original request was correct.
 10. In the course of the Commissioner's investigation, the public authority put forward that the cost of complying with the outstanding parts of the request would exceed the Appropriate Limit as defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and that as a result section 12(1) of the Act applies.
 11. As established in a number of Information Tribunal decisions, including *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth* (EA/2006/0078), the Commissioner has the discretion to consider an exemption claimed for the first time during the course of his investigation. As stated in *Bowbrick v The Information Commissioner* (EA/2005/0066) the Commissioner also has the discretion to apply an exemption that has not been cited by a public authority. Although section 12(1) is not technically an exemption, the Commissioner considers that this discretion may also apply in relation to the application of section 12(1).
 12. In this case the Commissioner has exercised his discretion to allow the late claim of section 12(1). This is because, although he considers that the public authority should have claimed this section when it first responded to the request, he also accepts that where it is claimed that the costs of providing information would exceed the appropriate limit, particularly where the claim is that the limit would be exceeded by a considerable margin, it would not be an appropriate use of public funds for him to expect a public authority to incur such costs, without having first considered the section 12(1) claim in detail. The Commissioner has also exercised his discretion to consider the application of section 12(1) to the whole of the request. This is because he considers that the public authority only limited its claim to certain questions because it believed, from the Commissioner's correspondence, that the complainant was only pursuing these particular aspects of his original complaint with the Commissioner. The Commissioner

acknowledges that his correspondence with the public authority in this respect did not accurately reflect the complainant's position. The Commissioner will consider the application of section 12(1) as at the date of the original request. He will also comment further on the circumstances leading to the public authority's late claim of section 12(1) in the Other Matters section of this Notice.

13. As the Commissioner has accepted the late claim of section 12(1) he will not consider the original application of section 30. As the public authority did not collate the information covered by the request prior to applying section 30, and the Commissioner would need to make any assessment about the validity of a section 30 claim by reference to the withheld information, he is not in a position to make such a decision. Again the Commissioner will comment further on this issue in the Other Matters section of this Notice.

Chronology

14. The Commissioner first wrote to the public authority on 27 June 2008, outlining the issues. After a number of reminders, the public authority replied on 25 September 2008 informing the Commissioner that throughout 2007 and 2008, the complainant had submitted further requests for information and as a result much of the information initially requested by the complainant had now been supplied.
15. The Commissioner then wrote to the complainant to confirm this and to ascertain what information was still outstanding. The complainant replied that some information had been supplied, but that the main concern was the validity, or otherwise, of the use of the public interest test.
16. On 9 October 2008 the Commissioner wrote again to the public authority, confirming the complainant was not content with the information already supplied. He sought to define the information gap and asked for copies of the information not given to the complainant in order to make a ruling as to the applicability of the exemption.
17. The public authority replied on 21 November 2008, confirming that although it was still of the opinion that section 30 was applicable at the date of the request the passage of time had meant that it might now be able to release further information. It did, however, state that some of the requested information had never been collated at the time of the original request due to the belief that the claimed exemption would stand.
18. Following further communications, the public authority confirmed that it was having difficulty collating the remaining information, and that following a review of how information was collected, there had been a change in record keeping. The public authority felt that as it had supplied more information, the complaint might be satisfied, albeit that there remained a number of outstanding issues. The public authority would write to the complainant to see if he was happy with the situation.
19. Following the exchange of communication, on 2 June 2009 the complainant re-stated that he still had not been provided with information in regard to a number

- of the original questions. On 5 August 2009, the public authority confirmed that to supply the remaining information would exceed the Appropriate Limit. It explained its reasons for applying this section of the Act.
20. On 22 September 2009 the Commissioner wrote to the public authority to ask for it to provide its calculations only taking into account the time from the beginning of the operation until the date of the request.
 21. On 22 October 2009 the public authority wrote to the Commissioner it explained that it was now prepared to release further information in relation to the elements in dispute. The Commissioner asked for it to do so and also to present its arguments to the complainant.
 22. Also on 22 October 2009 the Commissioner wrote to the complainant to ask whether the new information was adequate or whether he wanted the investigation to continue. He replied that he wanted the case to continue.
 23. On 23 October 2009 the Commissioner addressed final enquiries to the public authority and received a response on the same day.

Analysis

Exclusions

Section 12(1)

24. Section 12(1) of the Act states:

'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.'
25. Accordingly, section 12(1) provides that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'), the wording of which is provided in the legal annex to this Notice.
26. A public authority may only take into account the cost of determining whether it holds the information requested, locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £450 for all public authorities (other than central government) and equates to 2½ days' work (18 hours) at a rate of £25 per hour.
27. The Commissioner's investigation into the application of section 12(1) has three parts. The first part was to consider whether all of the requests should be aggregated or considered individually for the purposes of section 12(1). The

second part was to consider whether it was reasonable for the public authority to base its estimate on obtaining information from its electronic investigative records. If it was, then the third part was to consider whether the estimate about section 12(1) was reasonable and therefore whether the exclusion was correctly applied.

Should the outstanding requests be aggregated or considered individually for the purposes of section 12(1)?

28. When considering whether requests can be aggregated or need to be considered individually the Commissioner is guided by Regulation 5 of the Statutory Instrument 2004 No. 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" which states that:

'5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, 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 total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.'

29. In order to aggregate the requests for the purposes of section 12, the Commissioner must determine whether they relate to any extent, to the same or similar information. The interpretation of this part of the Fees Regulations has been considered by the Information Tribunal in *Ian Fitzsimmons v Department for Culture, Media and Sport* [EA/2007/0124]. The Tribunal made the following general observation at paragraph 43:

"The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate to any extent to the same or similar information [Tribunal emphasis]".

30. The Commissioner has considered the wording of each of the individual questions or requests in this case. He has concluded that they are similar enough to be aggregated under the Fees regulations as they all relate to information

about the structure and results of two very similar police operations with the theme of the sexual exploitation of children. This should not be taken to mean that the Commissioner will always accept that requests about police operations relating to the same type of crime will be able to be aggregated. This decision will always depend upon the individual circumstances of the case. In this particular case the Commissioner considers that the similarities of the two operations in question are substantial.

31. The Commissioner focussed his original investigation on the public authority's application of 12(1) to questions *vi*, *vii*, *viii* and *ix* in respect of Operation Engage and questions *v*, *vi*, *vii* and *viii* in respect of Operation Fruition. This was because this was the information that was regarded to be outstanding. However, in the Commissioner's view, it follows that if the costs of responding to these eight questions would exceed the costs limit then the cost of responding to all the requests would also exceed this limit.

Is this a circumstance where a failure to consider a less expensive method of extracting data renders the estimate unreasonable?

32. When considering this issue the Commissioner has received guidance from the Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0042]. In this case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However at paragraph 15, the Tribunal also made the following more general comments on alternative methods of extraction:

“(a)...the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;

(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate... “.

33. Those circumstances were set out at paragraph 13 where it was said:

“...it is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the alternative or had it drawn to its attention by the requestor or any other third party...”

34. The Commissioner has therefore considered whether there is an alternative that exists that is so obvious to consider that it renders the estimate unreasonable in this case. On 22 September 2009 the Commissioner asked the public authority to indicate why it was unable to conduct searches that would reveal the information that was asked for. In particular he asked for the public authority to focus its attention on the parts of the request outlined in paragraph 31 above.

35. The public authority referred the Commissioner to its intelligence database called 'Sleuth' and provided screenshots of how it works. The public authority stated that it could do 'direct searches' about the Operations but it would be unable to know that it had provided complete information without going through all the intelligence files individually. Direct searches would entail placing the operation name within the 'details contain' free text field and searching for results. As there was no requirement to note the Operation name on the electronic files, it explained that a search against the Operation name would not necessarily cover all the incidents relevant to the request. For example, if the record stated only that an individual had been soliciting a minor then this record might be relevant to the request but would not be found by a 'direct search' using the Operation name.
36. As part of a proposed informal resolution, the Commissioner suggested that the public authority should consider conducting a 'direct search' with the Operation names for the questions outlined in paragraph 31 above and that it should consider providing the results generated to the complainant. The public authority provided this information. This information provided answers to those enquiries so far as they were included in 'direct searches' made with the Operation names. The Commissioner notes that these answers may not be correct, or include all the recorded information held, as they would not include other relevant records that were not flagged under those 'direct searches'. In any case, as this information was provided as part of an attempt at informal resolution, it has no bearing upon the Commissioner's assessment of the validity of the section 12(1) claim.
37. In relation to the application of section 12(1) the Commissioner is satisfied that because 'direct searches' would not provide a complete answer, the provision of information using this method was not an obvious alternative that renders the estimate unreasonable in this case.

Was the estimate reasonable in this case and was section 12(1) therefore applied correctly?

38. The issue of what constitutes a reasonable estimate was also considered in the case of *Alasdair Roberts* and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:
- *"Only an estimate is required"* (i.e. not a precise calculation)
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3)
 - Time spent considering exemptions or redactions cannot be taken into account.
 - Estimates cannot take into account the costs relating to data validation or communication
 - The determination of a reasonable estimate can only be considered on a case-by-case basis and
 - Any estimate should be *"sensible, realistic and supported by cogent evidence"*
39. The activities referred to in Regulation 4(3) are:

"(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.”

40. The public authority explained that to be sure that it had acquired all the information for the elements that the Commissioner was considering it would need to manually check every intelligence file from 1 April 2004 (when the operation began) to 10 July 2006 (when the request was received).
41. The reason for this is because while it was able to run searches for both 'Operation Engage' and 'Operation Fruition' on its electronic management system it was unable to confirm that the records that came up were the only ones that it held that related to these operations. It stated that there was a good chance that there were further records that contained information about the crimes and actions taken but which did not refer to the operations by name. It confirmed it did not hold any central file about the operations which would provide the information requested and that it has now changed its record keeping as a result of receiving this request.
42. The public authority estimated that it generated around 150 intelligence reports in each of its seven departments (six departments concerns geographical areas and one concerns the motorway) every day. While it acknowledged that 'Operation Engage' was focussed on the Eastern Division and 'Operation Fruition' on its Pennine Division, it stated that it was quite possible that some incidents were referred across from other divisions and that all files would need to be checked. This meant that as the request covers around 900 days that it would have about a million records to check.
43. The Commissioner has considered whether it would be possible to use 'Sleuth' to narrow down the number of records that would need to be checked. 'Sleuth' contains only the following fields: details contain (a free text field), division, date input, section, collar number, source evaluation, intelligence evaluation and handling/dissemination. None of these fields would enable the search to be reduced in this case and therefore the Commissioner is satisfied that there would be approximately a million records to check to provide a completely accurate response to the outstanding questions.
44. The public authority explained that while intelligence reports are of variable length it estimated that it would take two minutes to look at each one on average. This time would be spend in reading and digesting the information, checking that the individual not previously counted and recording the outcome. The Commissioner has had a look at a sample of records and accepts that this estimate is reasonable.

45. Therefore to read all of the one million records would take about 33,000 hours, well in excess of the 18 hour 'appropriate limit'. He notes that even if he had limited the search to only the two most likely Divisions the cost limit would still be exceeded. The Commissioner is satisfied that this estimate is 'sensible, realistic and supported by cogent evidence'. He is therefore content that section 12(1) has been applied correctly by the public authority in this instance.
46. He notes that while his section 12(1) investigation focussed only on the questions outlined in paragraph 9 above, he believes that it is possible to aggregate the time taken for all of the remaining requests as well. This means that it would take more than 33,000 hours to find all the relevant information requested by the complainant for all parts of the original request. The Commissioner therefore believes that section 12(1) can be applied to the whole request dated 10 July 2006.

Procedural Requirements

Section 16(1)

47. Section 16(1) (full copy in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
48. The Commissioner is satisfied that the request was clear and further clarification was not needed for this request. Therefore paragraphs 8 to 11 of the Code did not require additional assistance to be provided in this case.
49. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new request for information without attracting the costs limit in accordance with paragraph 14 of the Code. In this case the Commissioner has considered whether it would have been reasonable for the public authority to have advised the complainant to reduce the scope of his request.
50. In this case the Commissioner regards the advice and assistance provided to the complainant when the public authority first relied upon section 12(1) as being inadequate. This is because when the public authority first advised the complainant that it was relying upon section 12(1) it didn't provide him with the explanation given above, but instead suggested that it could identify the relevant cases from the database using 'direct searches' but that the costs of extracting the information to answer his questions for these cases would exceed the costs limit. It then advised the complainant that he could refine his request to fall under the costs limit by shortening the time period it covered. The Commissioner considers that this was a breach of section 16(1) because the advice and assistance provided suggested that complete data for a more limited period of

time could be provided within the costs limit, when this was not in fact the public authority's final position.

51. However, during the course of his investigation the public authority has informally provided the complainant with more information and this notice has provided further explanation about how the information is held and why its provision would exceed the appropriate limit. In this circumstance the Commissioner considers that ordering the public authority to provide advice and assistance would not serve any useful purpose. Therefore the Commissioner requires no remedial steps in this instance.

Other Procedural Requirements

52. The public authority has committed a number of procedural breaches in handling this request.
53. Section 17(1) of the Act also requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it should in its refusal notice:-
- (a) state that fact,*
 - (b) specify the exemption in question,*
 - (c) state why the exemption applies.*
54. In its original refusal notice the public authority stated that it was relying on section 30. It should have correctly cited the exemption it was relying upon down to the relevant subsection. Following internal review, it confirmed that it still considered the information to be exempt but again it did not cite the relevant subsection. It was therefore in breach of section 17(1)(b).
55. By not issuing its section 30 refusal notice within twenty working days of receiving the request, the public authority also breached section 17(1).
56. By not failing to specify that it was relying upon section 12(1) by the date of completion of its internal review, the Commissioner also finds a breach of section 17(5).
57. By failing to cite its complaint procedures in its refusal notice it breached section 17(7)(a).
58. By failing to provide the Commissioner's details in either its refusal notice or internal review it breached section 17(7)(b).

The Decision

59. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- *It applied section 12(1) correctly to the information contained in the intelligence reports that were not easily accessible.*
60. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *It breached section 16(1) by failing to provide reasonable advice and assistance to assist the complainant in narrowing down his request.*
 - *It breached section 17(1) by failing to issue the refusal notice relying upon section 30 within twenty working days.*
 - *It breached section 17(1)(b) by failing to cite which subsection of section 30 it wished to rely upon by the date of completion of its internal review.*
 - *It breached section 17(5) in not issuing a section 12(1) notice within twenty working days.*
 - *It breached section 17(7)(a) in failing to provide its complaint procedure within its refusal notice.*
 - *It breached section 17(7)(b) in failing to provide the Commissioner's details in its refusal notice or internal review.*

Steps Required

61. The Commissioner requires no steps to be taken.

Other matters

62. The Commissioner is concerned that the public authority's approach of relying upon the section 30 exemption without first extracting and viewing the relevant information meant that the public authority did not rely upon section 12(1) until August 2009, some three years after receipt of the request. Although the Commissioner has accepted the late claim for the reasons given at paragraph 12 above, he considers the approach taken by the public authority to have been inappropriate in this respect. If the public authority had sought to view the information before applying the exemption, the difficulties in extracting the relevant information could have been identified immediately and the complainant

could have been advised of the public authority's reliance on section 12(1) within the statutory time limit for compliance. The Commissioner considers that in future the public authority should adopt the general practice of only applying exemptions after the relevant information has been collated and viewed.

63. The Commissioner also wishes to acknowledge that due to the delay in commencing his investigation of this case, he did not ask the public authority to provide him with the withheld information until June 2008. He would also acknowledge that although he asked the public authority to provide the withheld information on 27 June 2008 and again on 10 October 2008, he then failed to pursue this matter, focussing instead on his attempts to reach informal resolution of the case.
64. Whilst it may be appropriate for the Commissioner to pursue informal resolution in some cases, he acknowledges that in this case, had he continued to press for the provision of the withheld information, the difficulties in extracting the relevant information could have been identified earlier. The Commissioner has now amended his procedures so that withheld information is requested and chased by his Case Reception Unit and this action does not wait until a case is allocated for detailed investigation.

Right of Appeal

65. 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.
Website: 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 30th day of November 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager**

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

Legal Annex

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(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 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.'

S.12 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.'

S.16 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'.

Section 16(2) provides that -

'Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.'

S.17 Refusal of Request

Section 17(1) provides that -

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

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

Section 17(2) states –

'Where—

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-*
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and*
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

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

Section 17(3) provides that -

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

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

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

Section 17(4) provides that -

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

Section 17(5) provides that –

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

Section 30 Investigations and proceedings conducted by public authorities

Section 30(1) provides that –

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of -

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained -

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct."