

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 March 2010

Public Authority: National Savings and Investments
Address: 375 Kensington High Street
London
W14 8SD.

Summary

The complainant requested from National Savings and Investments (“the public authority”) Premium Bond statistical information for each monthly draw from 1st January 1997 to 1st November 2007 that detailed prizes, Bonds and amounts distributed regionally both to customers within the United Kingdom and in reports to Her Majesty’s Treasury. The public authority disclosed some of the information it held, but also withheld some information under section 12(1) of the Act because the costs limit applied. The Commissioner investigated and has considered sections 12, 16 and 17 of the Act. He decided that although section 12(1) was applied correctly by the public authority it breached section 17 of the Act. In relation to section 16, the public authority provided reasonable advice and assistance to the complainant and actually exceeded what was technically expected of it under the Act. The Commissioner requires no steps to be taken by the public authority.

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. On 12 November 2007 the complainant requested the following information from the public authority:

“Each monthly draw starting from 1st January 1997 up to 1st November 2007. I require a list of the amounts to be distributed as prizes and the totals for the number of Bonds held in each region/county, with particular attention to the high value prizes...I also need to know how much has actually been given to the

Treasury each month from 1st January 1997 to 1st November 2007 in relation to the amounts distributed as prizes.”

3. In a letter dated 7 December 2007 the public authority responded to the complainant's initial request letter dated 12 November 2007. In order to assist its explanation to the complainant the public authority explained the Premium Bond arrangements within the public authority; defined the operation of “ERNIE” (Electronic Random Number Indicator Equipment) and in order to answer the complainant's misgivings regarding the integrity of the public authority's systems, provided the following explanations:
 - ERNIE is not a computer but a machine where no numbers are keyed into the machine, so no numbers can be left out.
 - ERNIE is kept in a secure location and access to which is restricted to authorised personnel. Each month checks are carried out to confirm ERNIE has not been tampered with.
 - Government Actuary's Department ensures the random nature of ERNIE and issues a certificate on this basis. Prizes are not paid out without this certification.
 - ERNIE machine and the prize draw are subject to independent audit and inspection by the National Audit Office on a monthly basis. The findings of these inspections are made public to Parliament through the Public Accounts Committee.
 - The public authority is the Government's retail savings agency. Customer funds from the purchase of Premium Bonds are passed to the National Loans Fund (NLF) held by the Chancellor of the Exchequer. Prizes are paid from the NLF. The public authority sets the size of the prize fund each month by working out one month's interest on the total value of all Premium Bonds in the draw. The prize fund interest rate and the share given to each prize band can change from time to time and are detailed in NS&I “interest rates” leaflet and NS&I website (www.nsandi.com).
4. The public authority provided to the complainant the amounts transferred to the NLF for the period 1 January 1997 to 1 November 2007. It also informed the complainant that this information is available on the NS&I website from 2001 onwards at <http://www.nsandi.com/about/financialinformation.jsp>
5. The public authority also provided to the complainant a list of the number of prizes in each value band distributed over the period requested on a monthly basis. The public authority also advised that all winning bond numbers for the past 6 months as well as information on high value prize winners for the current month are available on the NS&I website at <http://www.nsandi.com/products/pb/winnerlist.jsp>. The complainant was satisfied with the disclosures detailed here and at paragraph 4.

6. The public authority informed the complainant that it was unable to provide a breakdown of holdings per region for every month in the period 1 January 1997 to 1 November 2007, as the information requested could not be provided within the cost ceiling established for answering requests. The public authority however provided a 'snapshot-in-time' to the complainant, which consisted of the number of Bonds held per region as at 4 December 2007 and the distribution of prizes (by value band) per region for the December 2007 draw.
7. The public authority added that Premium Bonds must be held for one full calendar month following the month they were bought before being eligible to take part in a prize draw. Only Bonds that were purchased by 31 October 2007 were eligible for the December 2007 draw. The public authority further explained that the information provided showing the number of Bonds held per region includes all Bonds purchased up to 4 December 2007 clarifying that not all these Bonds were eligible for the December 2007 draw.
8. On 14 December 2007 the complainant wrote to the public authority and asked again for the outstanding information: "breakdown of holdings per region for every month from 1 January 1997 to November 2007..." and additionally made the offer: "to pay the nominal costs of the copies of this information..."
9. On 18 December 2007 the public authority wrote to the complainant. It thanked the complainant for his letter dated 14 December 2007 and explained: "section 12 of the Freedom of Information Act 2005 does not oblige NS&I to provide a response if the costs associated with providing the response (as stipulated in the Act) is in excess of £600. As stated in my previous letter the cost of providing you with the breakdown of holdings per region for the period 1 January 1997 to 1 November 2007 will be in excess of £600."
10. On 7 January 2008 the complainant asked the public authority to conduct an internal review. The complainant asked the public authority why the records relating to the outstanding part of his request could not be located and provided especially when the records relating to other parts of the request were able to be found and disclosed. The public authority's review decision considered section 12(1) of the Act and this was communicated to the complainant on 12 February 2008 in the following terms:
 - It is not possible to provide a simple explanation of the costs involved in providing a breakdown of holdings per region for the period 1 January 1997 to 1 November 2007 as NS&I do not keep full historic records for this period of the total value of extant Bonds by region. Details of Bonds previously held but now repaid; old addresses and details of prize wins are all held separately.
 - The NS&I Premium Bonds Data System, containing the main customer records, only show the current state of a "customers holding" which includes name, address and current Bond numbers held.
 - To provide the information requested would require NS&I to write a bespoke computer programme to recreate "customers' holdings" as they appeared at each of the previous prize draws and then to produce the reports required.

- The software used would have to check every Premium Bond customer record at the date of each draw and analyse this information against the total level of holdings for each month within the 10 year period against millions of customer records.
 - Before starting the development of such software the public authority claimed they would need to undertake a more detailed study to fully understand the logic required and confirm whether it is possible to design and implement such a system. The study itself is estimated to be 20 person days work with no guarantee it would achieve the required result. The costs of having to retrieve and extract the information would be additional.
 - The Act and Regulations stipulates a cost ceiling of £600.00 which equates to 24 hours work at a rate of £25 per person per hour.
11. The public authority provided estimations of cost; time and resources expended to date in relation to this request and in accordance with The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) used this information as justification of how costs had so far been expended in complying with the request. Further, it used these calculations to suggest how expensive it will be to comply with the request in full and thereby how it will exceed the appropriate fees limit should any more work be undertaken. The public authority has advised that it holds the requested information but not in a complete form. Each piece of data, for example; name, addresses and details of prizes, are all held on several and separate databases because this information is considered to be historic and no longer required for the current or daily business purposes of the public authority.
12. The public authority advised that in order to comply fully with the complainant's request, this would involve the analysis of Premium Bonds' reports in order to establish, where and what data is stored, on which database (s) and to determine whether they can retrieve and provide the information requested by the complainant. Additional to this work is the systematic understanding of these reports and how they are provided by the databases in order to see whether it is possible to produce a separate report to satisfy the request, as well as investigating the feasibility of developing specific software that would need to be applied.
- Determining whether the public authority hold the information requested and locating the information or documents containing the information: estimate of 20 hours.
 - Extracting the information from the document containing it (including editing of information): estimate of 3 hours.
13. The public authority has, to date, expended costs of £575.00. Under section 12 of the Act and regulation 3(2) of the Regulations, the public authority is not obliged to answer a request if it considers that in doing so it would exceed the £600.00 ceiling. The public authority has spent almost the fees limit to date in complying

with the request and considers the additional time and manpower it will take to determine where and how the outstanding information is held and consider the operational feasibility and costs involved in identifying, retrieving and extracting this information, then the cumulative effect of this time and effort will greatly exceed the fees limit.

Investigation

Scope of the Case

14. On 24 February 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:
 - Why not all of the information requested in his request letter dated 12 November 2007 had been disclosed by the public authority?
15. The Commissioner considered the application of section 12 of the Act and the public authority's application of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Chronology

16. On 13 November 2008 the Commissioner wrote to the public authority and asked for responses to the following questions in order to evaluate whether section 12 and any other applicable sections of the Act, had been applied correctly.
 - Does the authority hold all the information requested by the complainant?
 - How is Premium Bond information processed within the public authority both historically (2007) and currently.
 - What systems of retention are in place (historic and current); for example back-up disks.
 - What relevant computer systems can be searched by parameters which would enable provision of the information requested.
17. On 21 November 2008 the public authority replied to the Commissioner, advising:
 - NS&I have one main management information database, the Data Warehouse.
 - Specific to this request, there are two key operational systems that provide a feed into the Data Warehouse: The NS&I Operational System which holds customer and transaction data, and the Prize Draw System which is linked to this and holds prize details.
 - The process copies data from the operational systems and transfers it to the Data Warehouse tables.

- The Data Warehouse is used for management information, marketing and trend analysis. The prime source of the transactional data including financial records, are the originating operational systems.
- There are no parameters that can be entered into the Data Warehouse to determine the location of a Bond at any point in time. Therefore in order to satisfy the outstanding information in the complainant's request it may be that the information could be obtained but analysis on how to do this would be required, hence the 20 person per day estimation to see if this was possible.
- To provide an answer as to whether the public authority can locate and retrieve the information, the public authority would have to undertake a complex logistical exercise in order to review the location of each of the approximate 26 million Premium Bond holders at the time of each of the draws and over a 10 year period. It would also need to consider other eligibility criteria, for example death claims and repayment of the Bonds.
- If it was determined that the public authority could generate the information, then software development followed by implementation with associated time and costs would be in addition to the £575.00 expended to date and would greatly exceed this amount.
- In accordance with section 1 of the Act an Authority is not obliged to answer a request that exceeds the limit of £600.00. The public authority sought to comply with section 16 of the Act (provision of advice and assistance), by providing a 'snapshot-in-time' in order to compensate for not being able to provide an historic breakdown of holdings per region, for every year and month in the period 1st January 1997 up to 1st November 2007 within the cost threshold. The 'snap-shot' provided by the public authority detailed the number of Bonds held per region as at 4th December 2007 and the distribution of prizes (by value band) per region for the December 2007 draw.
- The back-up processes for the Data Warehouse simply copy the entire database weekly onto tape. The back-ups are overwritten in a 12/13 week cycle, so therefore will be of no use in this complaint.

Analysis

Section 17: Refusal of request

18. The complainant made his initial request to the public authority in a letter dated 12 November 2007. The public authority did not acknowledge receipt of this request, so the complainant in his letter dated 2 December 2007 chased the public authority for a response. The public authority responded in a letter dated 10 December 2007 acknowledging receipt of the complaint and advising a full response would follow in a separate letter. In a letter dated 7 December 2007, (received by the complainant on 12 December 2007), the public authority provided a response to the complainant. They advised they held all the information requested but only supplied some information (see paragraphs 4 to 7). The public authority advised the complainant: "we are unable to provide holdings per region for every month 1 January 1997 to 1 November 2007 as the information requested could not be provided within the cost ceiling established for answering requests." In this letter the public authority failed to specify that it was applying section 12(1).

19. This response led the complainant to write to the public authority in a letter dated 14 December 2007 in which he asked for an explanation and breakdown of costs involved and made an offer to the public authority that he was prepared to pay the nominal costs, plus postage for any information which: “may be in excess of your established cost ceiling...” The public authority subsequently wrote to the complainant in a letter dated 18 December 2007 in which it fully explained section 12 and its application of the Fees Regulations; but failed to specifically address the complainant’s offer to pay nominal costs.
20. The initial request letter was dated 12 November 2007 and the comprehensive letter of response to the complainant was dated 18 December 2007, a period of 27 working days. By failing to specify that it was relying on section 12(1) of the Act, within 20 working days of receiving the request, the public authority breached section 17(5) of the Act.

Section 16: Advice and Assistance

21. The public authority wrote to the complainant in a letter dated 7 December 2007 and copied to him the information he required and pointed out that this and more information was available on its website and provided the following website links to assist him in obtaining information regarding amounts transferred to the National Loans Fund (NLF) within the requested time period. Additional website addresses were also provided, with information copied to the complainant by the public authority showing lists of prize winners by value band. The website addresses are: <http://www.nsandi.com/about/financialinformation.jsp> and <http://www.nsandi.com/products/pb/winnerslist.jsp>.
22. The Commissioner established in his communications with the public authority that it considered the requested information is held and is subject to section 12(1) of the Act. In order to locate and retrieve this information, the public authority would need to undertake costly investigations of its computer systems in order to provide this information. The public authority would then incur additional costs in recreating the customers’ holdings at the point of time referred to in the complainant’s request. The public authority would only be undertaking this research, investigations and compilations of data for the sole purpose of satisfying the complainant’s Freedom of Information Act request and not for any business purpose.
23. In his analysis of section 16 issues, the Commissioner considered what advice and assistance had been provided to the complainant by the public authority and what steps, if any, the public authority had taken in order to satisfy its obligations under the Act. The Commissioner concludes that since the cost of making any attempt to retrieve information on monthly holdings would exceed the appropriate limit, then no advice and assistance is technically necessary; paragraph 14, “Advice and Assistance and Fees” of the section 45 Code of Practice states that the public authority needs only to 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.” In this case, such

advice and assistance would be futile and so the public authority would not be expected to provide any advice and assistance.

24. The code also says (paragraph 14) that where the appropriate limit is exceeded the public authority should advise the applicant what information could be provided within the cost limit. In this way the applicant has the chance to choose what element of the request he wants to focus on. In this case as there is no chance of any element of the information on regional holdings being provided the public authority should have gone back and advised the applicant that the only information he could possibly get would be the information on the other elements of his request. But in fact the public authority has gone further and actually provided additional information (see paragraph 6), although technically it did not need to provide any advice and assistance in relation to the information request for monthly holdings.
25. Paragraph 14 of the section 45 code is supported by an Information Tribunal decision EA2006/0059 *Luc James Meunier v IC & NS&I* which stated (at paragraph 21) “there is no provision for a public authority to decide whether the application merits a response, or to appease what they consider the motive to be behind the request, instead of answering the request itself..” Here the Tribunal decided that the public authority did not need to provide additional information (such as the “snapshots” provided and discussed at paragraph 6 of this Decision Notice) as this additional information was not that which was requested by the complainant.
26. The Commissioner then looked at whether the public authority had taken any steps to ask the complainant to narrow or refine his request. His investigation found from the papers in his possession, no letter from the public authority asking the complainant to do so despite the complainant’s letter dated 14 December 2007 offering to pay the nominal costs of copies of information as well as the related postage incurred by the public authority. The Commissioner noted that the public authority could have better worded its responses to the complainant with the aim of more clearly and directly answering these specific questions, rather than assuming these questions were generally covered in its various responses.

Section 12: Cost of compliance exceeds appropriate limit.

27. The Commissioner in his analysis considered whether this complaint was several requests for information or only one request. He decided that, essentially, it is all part of the same request, even if technically its numerous elements would need to be aggregated for the purposes of section 12. The Commissioner was satisfied that the information sought by each element is so closely related to the information sought by the other elements that each element is simply part of the overall picture on the pay out of prizes from savings Bonds, that is, there is a sense that the collective value of the information is greater than that of its constituents parts. The Commissioner also considered that the actual way the requests are structured, that is, they are all contained in one fluid paragraph, again supported this decision.

28. The Commissioner considered the technical application of section 12 in aggregated requests. He noted that in Regulation 5(1)(a) of the Fees Regulations it states that where multiple requests are made by (a) one person or 5(2)(a) the two or more requests referred to in paragraph (1) relate to any extent, to the same or similar information and (b) where those requests are received by the public authority within any period of sixty consecutive working days that 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.
29. The Commissioner therefore considered that as the request relates to the same or similar information, the estimated cost of complying with the requests is to be taken to be the total costs which may be taken into account regarding locating and extracting the information. The Commissioner found no discretion here, the costs when considering the appropriate limit in this situation is the cost of dealing with aggregated requests.
30. In such situations the public authority should go back to the applicant and provide him with advice under section 16. This introduces the section 45 code of practice and the Commissioner's comments detailed at paragraph 23 to 25 of this decision notice.
31. Analysis of the public authority's responses to the Commissioner and complainant in letters dated: 7 December 2007, 18 December 2007, 12 February 2008 and 4 April 2008 reveals that the public authority does hold the information requested by the complainant. However as this information is, after a period of time, considered historic, it is no longer retained on a single database and the data is then automatically distributed by name, address, date, prizes, etcetera and disseminated to separate and various databases and systems (explained at paragraphs 10 and 17). In order to comply with the balance of the complainant's request, the public authority would be required to re-gather this disseminated information from its various systems in order to recreate the "customer holding" in the format that it was previously recorded. The public authority's Premium Bond data system shows the main customer records as only depicting the current state of a customer holding which includes name, address and current Bond numbers held. Details of Bonds previously held but now repaid; old addresses and details of prize wins are all held separately.
32. The public authority's letter dated 4 April 2008 to the Commissioner advises that the only information they are unable to provide to the complainant is "...a monthly breakdown of holdings per region for the period 1 January 1997 to 1 November 2007." The public authority has provided (paragraphs 4 to 8) that information which it was immediately able to do so, as well as 'snapshots in time' with the purpose of providing as much information as possible to the complainant in fulfilment of his request.
33. To provide the outstanding information to the complainant the public authority advised the Commissioner that they would have to write a computer program to recreate a customer's holding as it appeared at each of the previous prize draws and then produce the reports the complainant requires. The software would have

to check every Premium Bond customer record at the date of each draw and analyse this information against the total level of holdings for each month within the 10 year period. The public authority explained that after each months draw some Bonds will have been repaid, customers may have moved house or passed away or generally, customers' circumstances may have changed. The software would need to take all these factors into account and look back over a 10 year period against millions of customer records.

The public authority added that even before starting the development of such software they would need to undertake a more detailed study to fully understand the logic required and confirm it is possible to design and implement such a system. The study itself is estimated, by the public authority, to be 20 person days work, with no guarantee that it would achieve the required result.

34. Section 12(1) of the Act states that a public authority is not obliged to comply with the requirements of section 1(1) of the Act if the authority estimates the cost of complying with the request would exceed the appropriate limit.
35. Section 12(2) of the Act states that a public authority is obliged to comply with the requirements of section 1(1)(a) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
36. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). The appropriate limit provided at paragraph 3(2) of the Regulations is currently set at £600.00 for central government departments and at £25 per person, per hour equates to 24 hours work, (600 divided by 25 equals 24).
37. In estimating the cost of complying, paragraph 4(3) to the Regulations state that 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.
38. The Regulations state at paragraph 4(4): '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) of the Regulations on behalf of the authority are expected to spend on those activities and those costs are to be estimated at a rate of £25 per person per hour'.
39. The Commissioner considered the calculations supplied by the public authority in order to establish if these estimates may be considered to be 'reasonable' costs. This consideration was necessary as previous Information Tribunal decisions had considered the reasonableness of costs expended. What is "reasonable" was considered in Tribunal Decisions EA/2006/0088 Brown v ICO and EA/2008/0042 Williams v ICO. In these cases it was held that in establishing what are "reasonable" costs; a public authority ought to consider those issues detailed in the bullet points at paragraph 37 of this Decision Notice. In these cases the Tribunal stated that "the Commissioner and the Tribunal can enquire into whether

the facts or assumptions underlying the estimation exist and have been taken into account by the public authority. The Commissioner and the Tribunal can also enquire about whether the estimation has been made upon either 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) [those 4 bullet points shown at paragraph 37] must be reasonable".

40. The Commissioner appreciated that the public authority had expended, by their estimations, £575.00 to date in complying with this request and the public authority were using this expenditure as a guide to further costs. He was mindful that the Regulations refer to the estimated costs of complying with the request rather than the actual costs expended to date. The Commissioner further considered whether the outstanding information was held by the public authority and whether this information could be provided to the complainant without exceeding the cost threshold provided within the Regulations.
41. The Commissioner's investigation focussed on what systematic arrangements the public authority has in place regarding Premium Bond data, prizes and how statistics are generated, stored and retrieved. Questions were asked of the public authority in order to determine whether computer records or back-up facilities may be interrogated by parameter searches to expeditiously and cost effectively produce the required information.
42. The public authority responded by explaining its data processing arrangements (paragraph 17), its systems and what information is held on each, as well as clarifying the role of the Premium Bond generator (ERNIE); advising it is not a computer but a number generating machine that produces numbers in a random and uncontrollable form, lacking any sophisticated processing, parameter searching or retrieval capabilities.
43. The Commissioner considered that the public authority was not able to easily or readily comply with the balance of the complaint. In order for it to do so the public authority would have to initially employ specialists in a scoping capacity in order to accurately determine feasibility and on completion of the feasibility study the specialists must determine whether the public authority held the information sought by the complainant. These tasks would in themselves exceed the cost limits provided in the Regulations. Any additional resources employed by the public authority to retrieve, examine, extract and then to supply the required information to the complainant would greatly exceed the reasonable costs allowed under the Act and Regulations.
44. The Commissioner considered the juxtaposition of section 12 cost estimates and the duty to provide advice and assistance under section 16. He was aware of a previous Information Tribunal decision on this matter and therefore considered its application in this case.
45. The Information Tribunal in the case of Roberts v the Information Commissioner EA/2008/0050 agreed with the Commissioner's view that whilst the public authority did not deal with its obligation under section 16 to provide advice and

assistance that might have enabled the applicant to refine his request, this did not invalidate the section 12 refusal. They acknowledged the importance of public authorities discussing the scope of a request with the applicant so that complying with it would not exceed the costs limit, but nevertheless made the following findings:

- “There is nothing in the language of section 12 itself to suggest that the estimate may be challenged for any reason other than that it fails to comply with the Regulations.”
 - “Nor does section 16 specify that failure to comply with its requirement should invalidate an estimate. In fact no sanction is mentioned in that section and it is to be inferred that the only available sanctions are those set out in Part IV of the FOIA, which make no reference to any consequential impact of breach on the applicability of other provisions.”
46. The Code of Practice indicates that the requirement to give advice only arises once the public authority has reached the stage where section 12 applies (“Where an authority is not obliged to comply with a request for information...”). Neither the statute nor the Code of Practice contain any suggestion that avoiding the obligation to comply is conditional on first complying with the Code of Practice; or that a public authority must consult with the person seeking information as part of the process by which it reaches an estimated costs figure. This is entirely consistent with the purpose of the Code of Practice, (which is to provide guidance only), and with the language of section 16 itself, which makes it clear in subsection (2) that the only impact of the Code of Practice is that a public authority which complies with it will be found to have provided the advice and assistance necessary to avoid a breach of subsection (1).”
47. The Tribunal were of the view that if they had declared that the failure to advise or assist invalidated the costs estimate in this case, “we risk falling into the trap of creating law, rather than interpreting law as created by Parliament and FOIA.”

The Decision

48. 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:
- The public authority dealt with the request in accordance with the Act to the extent that it correctly refused to disclose some of the requested information by relying on section 12(1) of the Act.
 - The public authority provided the complainant with advice and assistance in accordance with section 16 of the Act.
49. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The public authority breached section 17(5) of the Act by failing to inform the complainant that it was relying on section 12(1) within 20 working days of receiving the request.

Steps Required

50. The Commissioner requires no steps to be taken.

Other Matters

51. Aggregation of three separate requests for information within a single item of correspondence. The Commissioner considered the Information Tribunal decision, EA/2007/0124, *Fitzsimmons v ICO & DCMS*.

“The Commissioner notes that in this case the complainant has made more than one request within a single item of correspondence. Section 12(4) provides that, in certain circumstances set out in the Statutory Instrument 2004 No. 3244 “The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004” (“the Fees Regulations”), requests can be aggregated so 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. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information”.

The Commissioner concludes that in this case he is satisfied that the requests do relate to the same or similar information and can therefore be aggregated.

52. As a reminder of good practice, the Commissioner directs the reader to note that the Information Tribunal in the case of *Gowers and the London Borough of Camden EA/2007/0114* (at paragraph 68) considered that a “public authority seeking to rely on section 12 should include in its refusal notice, its estimate of the cost of compliance and how that figure has been arrived at, so that at the very least, the applicant can consider how he may be able to refine or limit his request so as to come within the costs limit..”

Right of Appeal

53. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

54. 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 2nd day of March 2010

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex: To Decision Notice: FS 50194062

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.”

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”.

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 17(6) provides that –

“Subsection (5) does not apply where –

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

Section 17(7) provides that –

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

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

Statutory Instrument 2004 No. 3244.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Section 3: The Appropriate Limit

3 (1) provides;

This Regulation has effect to prescribe the appropriate limit referred to in section 9A (3) and (4) of the 1998 Act and the appropriate limit referred to in section 12 (1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part 1 of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.