

Freedom of Information Act 2000 (Section 50) Decision Notice

Date: 12 August 2010

Public Authority: Nottingham City Council
Address: The Guildhall
Burton Street
Nottingham
NG1 4BT

Summary

The complainant asked Nottingham City Council for various pieces of information regarding the Discretionary Housing Payments (DHP) scheme for each year since its introduction in 2001. Nottingham City Council provided information in relation to all but one of the requests, to which it applied section 12. During the course of the Commissioner's investigation, the public authority provided the complainant with similar information to that which he had requested which was more readily accessible, in order to try and informally resolve the case. The complainant did not wish to withdraw his complaint regarding the initial refusal of his request. The Commissioner therefore investigated whether section 12(1) was appropriately used as a basis to refuse the complainant's request. He has concluded that Nottingham City Council was correct to refuse the request under section 12(1) of the Act. He has however found that the public authority breached section 16 in failing to provide sufficient advice and assistance. However, given that the complainant is satisfied with the information that was disclosed during the course of the investigation the Commissioner requires no steps to be taken by the public authority in this regard.

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 28 November 2008 the complainant made the following requests:

*"Please could you provide me with the following information about Nottingham City Council's administration of the Discretionary Housing Payments (DHP) scheme **for each year** since its introduction in 2001.*

- I. The central government contribution to Nottingham City Council's DHP scheme.*
- II. The total maximum expenditure available.*
- III. The total number of applications to the scheme.*
- IV. The number of successful applications to scheme.*
- V. The actual total expenditure paid out to claimants under the scheme.*

Please could you also provide me with details of all initiatives carried out or supported by Nottingham City Council to increase the take up of claims for DHPs."

3. In a response dated 29 December 2008, within 20 working days, the public authority provided the information relevant to requests 1, 2, 4 and 5. However with regards to request 3 stated that:

"As Nottingham City Council only records successful applicants, an Officer would need to manually check the imaging system and paper records for each year to work out the total number of applicants for the scheme. There are 174 cases caught by the time period and each case would take approximately 45 minutes to check. Within these 2.5 days we would be able to provide you with information on 25 cases without the need for you to incur any costs other than for reproduction and postage. If you would be satisfied with this information, please inform Information Governance at the above address and the Authority will be pleased to provide it."

The public authority cited the exemption under section 12 of the Act. It also offered the complainant the option of receiving all of the requested information upon the payment of a fee.

4. In an email dated 11 January 2009 the complainant requested an internal review of the public authority's decision to request 3 under section 12. When requesting an internal review the complainant raised

the fact that figures for 2005-6 and 2006-7 were provided in a report to the Debt Collection Task and Finish Panel dated 18 September 2006. In his view this suggested that the information he had requested should have been accessible within the limit of £450.

5. On 12 March 2009, over 40 working days later, the public authority provided the complainant with the outcome of its internal review. The public authority upheld its original decision not to provide the information to the complainant, stating that:

"I have raised your concerns about the information you require seeming to be readily available in previous years as evidenced by the Debt Collection report and have had the following reply; "The figures were generated in that particular year as part of a business need and a manual monitoring exercise had to be carried out". Unfortunately this means we are in the same position as stated in this office's previous reply in that figures can only be obtained by significant manual work being conducted."

6. The public authority also provided the complainant with the information he had requested in relation to *"details of all initiatives carried out or supported by Nottingham City Council to increase the take up of claims for DHPs"* and apologised for the oversight in failing to provide the information as part of its initial response.

The Investigation

Scope of the case

7. On 15 March 2009 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 public authority's application of section 12 to his third request.

Chronology

8. On 11 June 2009 the Commissioner contacted the public authority and asked it to provide further clarification of the costs involved in locating, retrieving and extracting the information requested by the complainant.
9. In a letter dated 19 June 2009 the public authority responded to the Commissioner. It stated that, in order to collate the information requested, it would have to manually check 174 cases at an estimated time of 45 minutes per case. The public authority stated that in an

attempt to fulfil their obligations under section 16 (advice and assistance) it had offered to provide information on 25 cases. It also explained that the figures generated in 2006 had been produced as the result of a manual monitoring exercise and that the same process would have to be used to provide the complainant with the information he had requested.

10. At the initial stages of the investigation the case worker contacted the complainant and explained that, having assessed the information available, her preliminary view was that the public authority had appropriately refused request 3 on the basis that section 12(1) applied. The complainant was asked whether he wished to withdraw his complaint on the basis that the case worker would be recommending to the Commissioner that he issue a decision notice agreeing with the application of section 12(1). The complainant opted not to withdraw his complaint.
11. The Commissioner subsequently sought a sample of the withheld information and further submissions from the public authority.
12. On 10 September 2009 the public authority provided the Commissioner with more evidence to support its application of section 12 along with a sample of the files which would have had to have been searched to retrieve the information requested. In this response the public authority stated that it was happy for a representative of the Commissioner to visit its offices to inspect further files in situ if required. It also stated that there were not 174 cases as previously quoted, but in fact 3533 cases from August 2001 until 9 September 2009.
13. On 18 September 2009 the Commissioner telephoned the public authority to query the discrepancy in the two figures provided, that being 174 cases in its letter dated 19 June 2009 and 3533 cases in its letter dated 10 September 2009. The public authority said that it had provided the information which it held at the time of the request. The public authority had kept details of unsuccessful applications on an Excel spreadsheet for 07/08 and 08/09, there were 100 unsuccessful applications in 07/08 and there had been 74 unsuccessful applications during 08/09 at the time of the request.
14. The public authority also explained that since the request and the Commissioner's investigation it had involved its IT department and written and run a management query against its imaging system, which also contains information regarding applications, to establish the number of documents classed "application" within the system. The Commissioner asked the public authority to consider how difficult it would be for it to break down the new total of 3533 cases by year. This

was in an attempt to informally resolve this complaint as if that information could be provided it would amount to an estimate for each year similar to that available in the 2006 report mentioned above.

15. The public authority confirmed that locating and extracting information from the imaging system using query language in order to provide an estimate of the total number of applications received for each year between 2001 and 2009 would take less than an hour.
16. On the 28 September 2009, Nottingham City Council provided the complainant with a copy of the breakdown of estimated applications per year obtained via the imaging system. It stated that this amounted to an estimate because it was possible that the totals included documents that may have been misidentified as applications and it would not necessarily have identified where an applicant submitted more than one application. It maintained that the only way to locate and retrieve the information that had actually been requested, i.e. the total number of applications actually received (as opposed to an estimate) was to conduct a search of manual and electronic files to check how many applications each applicant had submitted and to eliminate any documents that the search query had picked up in error and that this would exceed the appropriate limit.
17. Having received the information mentioned above, the complainant indicated that although he was content with what he had been supplied, he did not consider his complaint resolved and therefore he required a formal decision notice in this matter.
18. The Commissioner contacted the public authority to request clarification about a number of issues on 11 May 2010. The public authority provided the requested information on 18 June 2010. The Commissioner understands from this response that the information relevant to the most recent years (2007-2008 and 2008-2009) that were maintained in an Excel spreadsheet (as well as in the imaging system) is about the number of cases ongoing at that time. The public authority explained that although this recorded the number of cases it did not include the total number of applications for each case. As several applications are sometimes received on the same case a manual search would still be necessary to obtain the information relevant to those years which was within the scope of request 3.

Analysis

Exemption - section 12

Section 12(1) of the Act states:

19. '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.'
20. Accordingly, section 12 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. 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.
21. As explained above the public authority stated that in order to provide the complainant with the information relevant to his request, as opposed to the estimate that was supplied, it would be necessary to search and cross reference information held electronically and in manual files. The Commissioner accepts that such activities would be necessary to obtain the requested information. The public authority estimated that it would take between 40 and 45 minutes to check all the relevant information on each individual case.
22. The Commissioner has inspected the sample manual files provided by the public authority to assess whether its estimate that to comply with request 3 would exceed the appropriate limit was reasonable. The public authority stated that the target time for the public authority staff to process each application is 40 minutes per case which in its opinion added further strength to the public authority's application of section 12. The Commissioner does not consider that the time taken by the public authority's staff to actually process applications to be relevant when making an estimate for the purposes of this case. The public authority simply needed to consider the amount of time required to identify applications on each file in order to respond to request 3.
23. Having reviewed the representative sample of manual files the Commissioner found that it took an average of approximately 3

minutes per file to locate the information relevant to the request.

Whilst the Commissioner does not agree that the time taken to process an application is relevant, and therefore does not accept the estimate of 40-45 minutes per case on this basis, he nevertheless recognises that considering 3533 cases at an average of 3 minutes per file would amount to approximately 176 hours of work. Therefore on this basis alone the cost of complying with request 3 would significantly exceed the appropriate limit, even without considering the time taken to review electronic records.

24. In view of the above the Commissioner has concluded that section 12(1) was appropriately applied to request 3 by the public authority on this occasion and that it was not obliged to comply with section 1(1)(b) in relation to request 3.

Section 16 Advice and assistance

25. 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".

26. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the section 45 Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000" recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit, and also consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.
27. The Commissioner notes that, in its letter dated 19 June 2009, the public authority indicated that it could provide information on 25 cases within the appropriate limit. Therefore it did attempt to provide advice and assistance.
28. However, in the Commissioner's view the public authority did not give full enough consideration to the different ways in which the

complainant could have been advised to narrow his request to bring it within the appropriate limit, for example restricting the request to cover a shorter timeframe. Therefore the Commissioner has concluded that the advice and assistance provided was not reasonable in the circumstances and the public authority breached section 16(1). However, given that the complainant has indicated that he is content with the information that he has now received, the Commissioner has decided not to order any steps in this regard on this occasion.

The Decision

29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in refusing request 3 on the basis that section 12(1) applied.
30. The Commissioner has further concluded that the public authority failed to provide sufficient advice and assistance and therefore breached section 16(1). However given that the complainant has indicated that he is satisfied with the information provided during the course of the investigation, the Commissioner has decided not to order any steps in this regard.

Steps Required

31. For the reasons given above, the Commissioner requires no steps to be taken.

Other matters

32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20

working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took just over 40 working for an internal review to be completed, and as the issues arising were not exceptionally complex, is not persuaded that the additional time needed was reasonable.

Right of Appeal

33. 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

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 sent.

Dated the 12th day of August 2010

Signed

**Jo Pedder
Group Manager Policy Delivery**

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

Legal annex

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.”

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (No. 3244)

The appropriate limit

Regulation 3 provides that –

“(1) This regulation has effect to prescribe 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 I of Schedule 1 to the 2000 Act, the appropriate limit is £600.”

Estimating the cost of complying with a request – general

Regulation 4 provides that –

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request–

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or...

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

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

- (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
- (4) To the extent to which any of the costs which a public authority takes into account are attributable to the time 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."

Estimating the cost of complying with a request - aggregation of related requests

Regulation 5 provides that -

"(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.

(3) In this regulation, "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^[4] in any part of the United Kingdom."

Section 16 - Duty to provide advice and assistance

(1) 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.

(2) 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.