

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 June 2010

Public Authority: Ofcom
Address: Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Summary

On 2 March 2009 the complainant submitted a Freedom of Information request to Ofcom regarding the number of complaints which Ofcom had received where the initial verdict had been overturned. Initially, Ofcom refused this request in general terms but then revised its approach and in its subsequent refusal relied upon cost considerations and applied section 12 of the Freedom of Information Act 2000 (the 'Act'). The Commissioner finds that section 12(1) has been correctly applied. He has also recorded a number of procedural breaches.

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. When this request was made, the Information Commissioner's Office (the 'ICO') was considering another case where the complainant had made a similar request to the same public authority. The request regarded the number of complaints received from viewers/listeners that were

deemed not to have broken any broadcasting codes and which on review, were subsequently overturned. It covered a two year period. The request was refused on cost grounds under section 12 of the Act. Ofcom stated that to provide the information, it would have to search 78,000 cases and this would exceed the cost limit.

3. A Decision Notice regarding this case (reference number FS50203058) was issued on 21 December 2009. It concluded that section 12 had been applied correctly. A copy of that Decision Notice is available in the Annex at the end of this Notice.
4. This current request is substantially similar but concerns any number of cases up to 2009.

The Request

5. On 2 March 2009 the complainant wrote to Ofcom and requested the following information:

*'the number of times that Ofcom had issued a **not upheld** verdict which subsequently changed to an **upheld** verdict'.*

6. On 30 March 2009 the complainant received a reply from Ofcom. It explained that Ofcom handles two types of complaints: (1) standards and (2) fairness and privacy.

- In standards complaints (which concern harm and offence, impartiality and accuracy, protection of under-eighteens and prevention of crime), once a decision is made, either the broadcaster or the complainant may request a review. There have been, to date, no instances when a not upheld decision has been changed to an upheld decision about the content of programmes.
- In fairness and privacy, Ofcom makes a 'provisional decision' before publication. The broadcaster or the complainant may request a review of that decision. The review is heard by Ofcom's Fairness Committee. There have been occasions where not upheld provisional decisions have been changed to upheld decisions. This information is published on the Broadcast Bulletin which is available via the Ofcom website at:

http://www.ofcom.org.uk/tv/obb/prog_cb/

7. On 3 July 2009, Ofcom sent a follow-up letter to the complainant. It informed him that the information provided on 30 March 2009 was based on the recollections of its Content and Standards Team, to the

best of their knowledge. This information was provided "in order to be helpful" and in accordance with section 16 of the Freedom of Information Act 2000 (the 'Act') which requires a public authority to provide an applicant with advice and assistance.

8. Ofcom informed the complainant that in order to provide him with a *definitive* answer to his information request, it would have to review approximately 78,000 new cases. In March, Ofcom had not felt that the request had required a definitive response and at the time believed that the above response was sufficient. However, Ofcom now wanted to inform the complainant that should a definitive response be required, it would wish to rely upon section 12 of the Act. This allows a public authority to refuse a request if the cost of compliance would exceed the appropriate limit. Ofcom apologised for not making this clear in its initial response.
9. The complainant requested an internal review on 19 July 2009. This was provided on 23 September 2009.
10. In this review Ofcom came to the same conclusions as those reached in its initial response. It argued that the requested information was not readily accessible and explained that a considerable amount of time would be needed to locate, retrieve, identify and extract the relevant information. It would have to search approximately 78,000 cases. Ofcom explained that section 12 of the Act provides that a public authority may refuse to comply with an information request if the cost would exceed the appropriate limit.
11. Ofcom explained that The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 state that this cost limit is £450 for public authorities which are not part of central government or the armed forces. The costs are calculated at £25 per hour per person regardless of the rate of pay, which means that the limit will be exceeded if the work involved would exceed 18 hours.
12. Ofcom estimated that it would take at least 18 hours to comply with this request. It suggested that the complainant might wish to narrow his request.
13. On 28 September 2009 the complainant wrote to Ofcom again and questioned how he might narrow his request. He referred to his earlier request which had requested the same information over a two year period. This had also been refused by Ofcom on the grounds of cost. It was therefore not clear to him how he could give his request a more 'specific scope'. He repeated his request.

14. On 22 December 2009 Ofcom replied to the letter of complaint of 28 September 2009. It repeated the above arguments and informed the complainant that it had a duty to provide advice and assistance but could not formulate his request for him. It suggested that he may wish to restrict the time period of his request or otherwise narrow its scope.

The Investigation

Scope of the case

15. On 7 December 2009 the complainant wrote to the ICO about Ofcom's response. He wished to complain about the length of time it had taken Ofcom to provide an internal review and about its failure to provide him with the requested information.
16. In subsequent emails to the ICO (dated 28 December 2009 and 5 January 2010), the complainant requested that his complaint be dealt with formally by the ICO. He also pointed out that Ofcom took 60 working days to reply to his request for information and asked that this should be considered as part of this complaint.
17. The complainant pointed out that the last request he made to Ofcom for similar information was resolved with a Decision Notice dated 21 December 2009. (Case reference FS50203058).

Chronology

18. On 2 February 2010 the Commissioner confirmed with Ofcom in a telephone call that the arguments regarding the time it would take to search the relevant database for the requested information have not changed since February 2008. These arguments are summarised in the Decision Notice of 21 December 2009.
19. On 11 February 2010 the Commissioner wrote to the complainant and informed him that any procedural breaches regarding this case would be logged with the Enforcement Team at the ICO. The Commissioner informed the complainant that the conclusions of the Decision Notice of 21 December 2009 were applicable to this case. He therefore sought a view as to whether the complainant wished to proceed with this matter.
20. On 15 February 2010 the complainant informed the ICO that he did not accept the provisional conclusions of the Commissioner.

Analysis

Substantive Procedural Matters

Section 12

21. The full text of section 12 is available in the Legal Annex at the end of this Notice.

22. Section 12(1) 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.'

The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. For public authorities other than central government, this cost limit is currently set at £450 and equates to 18 hours of work at £25 per hour.

23. Ofcom has argued that the requested information was not readily accessible and explained that a considerable amount of time would be needed to locate, retrieve, identify and extract the relevant information. It would have to search approximately 78,000 cases.

24. This estimate was the same as that provided for the earlier request the complainant had made to Ofcom. At that time this was under consideration by the ICO (FS50203058). A breakdown of the cost estimate was provided for this case and this was summarised in the Decision Notice of 21 December 2009. The conclusion in this case was that Ofcom was correct to conclude that a search of the records would exceed the cost limit of £450, and that it would so far exceed the limit that no meaningful advice could have been provided as to how to refine the request.

25. Although in both complaints Ofcom explained that 78,000 cases would need to be searched, the two requests in fact specified different time periods. The first request gave a two-year period (2006 -2008) and this second request concerned any number of cases up to March 2009.

26. Ofcom therefore failed to update its response regarding this new request. While the ICO understands why the same figure was used, the Commissioner would expect a public authority to provide an accurate

and up-to-date estimate when explaining why providing the requested information would exceed the cost limits.

27. However, as the second request would involve a search of well in excess of 78,000 cases, the Commissioner accepts that a search of the cases involved would exceed the cost limit of £450. Section 12(1) has therefore been correctly applied.

Procedural Requirements

Section 16

28. Section 16 provides that a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so. The full text of section 16 is available in the Legal Annex at the end of this Notice
29. The Commissioner notes that in accordance with that duty Ofcom advised the complainant to consider narrowing the scope of his request, and suggested he restrict its time period. He also notes that given the facts of the present case it would be very unlikely that a narrowing of the request could be achieved in any meaningful way. He therefore finds insufficient evidence of a section 16 breach.

Section 17(5)

30. The full text of section 17(5) is available in the Legal Annex at the end of this Notice.
31. The information request was made to Ofcom on 2 March 2009. Ofcom provided the complainant with an initial response on 30 March 2009 and a follow-up response on 3 July 2009.
32. The initial response was provided in accordance with section 10(1) of the Act which states that a public authority must respond to an information request within 20 working days.
33. However, the Commissioner would not regard the response provided on 30 March 2009 as sufficient to comply with the Act. As indicated in the follow-up response of 3 July 2009 Ofcom acknowledged that it had not provided the complainant with a 'definitive response'. Ofcom still felt that the response initially provided was sufficient; however, the Commissioner finds that it was in breach of section 17(5) of the Act. This requires that a public authority should inform the applicant that as that the requested information cannot be provided within the appropriate cost limits, it is not obliged to comply with the request under section 12 of the Act.

The Decision

34. The Commissioner's decision is that Ofcom dealt with the following elements of the request in accordance with the requirements of the Act:

- Section 12(1), in that it correctly concluded that a search of the records would exceed the cost limit of £450.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- Section 17(5), in that Ofcom failed in its initial response to state that because the requested information could not be provided within the appropriate cost limits, it was not obliged to comply with the request under section 12 of the Act.

Steps Required

35. The Commissioner requires no steps to be taken.

Other matters

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

37. Ofcom did not provide a breakdown of the costs to the complainant; although it is not a statutory requirement, it would have been good practice. The Tribunal offered support for this approach in the case of *Gowers and the London Borough of Camden* in which it said that a public authority should demonstrate how their estimate has been calculated:

"... 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 might be able to refine or limit his request so as to come within the cost limit..."

38. The complainant requested an internal review on 19 July 2009. It was

provided on 23 September 2009, 47 working days later.

39. 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 over 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

40. In his email of 5 January 2010, the complainant explained that it took Ofcom 60 working days to reply to his request of 28 September 2009 (the reply was dated 22 December 2009). However, the Commissioner does not consider that the letter of 28 September 2009 contained a new request but would consider it to be a letter of complaint. The ICO acknowledges that it would be good practice for a public authority to respond to a letter of complaint within 20 working days but the Commissioner does not judge that Ofcom breached the Act with regard to this particular letter.

Right of Appeal

41. 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 21st day of June 2010

Signed

**Anne Jones
Assistant Commissioner**

**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.”

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’.

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.'

Refusal of Request

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 notice stating that fact".

Annex : Decision Notice FS50203058

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 December 2009

Public Authority: Ofcom
Address: Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Summary

The complainant made a series of requests to Ofcom regarding the number of complaints received from viewers/listeners that were deemed not to have broken any broadcasting code and which on review, were subsequently overturned. Ofcom refused the request on cost grounds under section 12 of the Freedom of Information Act 2000 ("the Act"). The Commissioner finds that section 12(1) has been applied correctly. He has also recorded a number of procedural breaches.

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 14 February 2008, the complainant made the following information request:

"B. During the period of the last two years, up till the date of this email, how many viewers/listeners complaints that were deemed not to

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have broken any broadcasting code (not upheld) gone to the next stage, a review.

C. From the answer to B, if any, how many went to be additionally reviewed.

D. From the answer to C, if any, how many went to Ofcom's internal appeals.

E. From the answer to D, if any, how many were deemed not to have broken any broadcasting code, not upheld."

3. The public authority responded to this request on 13 March 2008 as follows:

"Ofcom's complaints database does not categorise a case as "a request for review from a complainant" after the complainant has received a not upheld decision.

In the two years prior to the date when your request was received, Ofcom logged approximately 78,000 new cases relating to television and radio broadcasts. Of these cases, 250 were logged from complainants who were responding to the outcome of their complaint. However, these responses included both requests for review and comments on the outcome of a complaint. Therefore, Ofcom does not hold the information on the total number of cases in the last two years that have been not upheld and then reviewed.

As Ofcom does not hold the information to respond to your first question under the Act, it is not possible to answer your further questions".

4. The complainant requested an internal review on 19 March 2008.

5. Ofcom responded on 22 May 2008 advising the complainant that they were unable to provide the information requested. They advised that an initial search had indicated there were 250 cases which were from complainants responding to the outcome of their complaints. These included complaints in which:

- complainants have commented on the outcome of their initial complaints;
- complainants have requested further information on the outcome of their case;
- complainants have requested a formal review; or
- complainants have requested all of the above

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Ofcom stated that 250 cases were logged as new cases and were noted in the database as being linked to the original complaint. Ofcom said that there was no single category within the database that listed specifically those cases in which the complainants have requested a review. Therefore Ofcom would have to review not only the 250 cases already mentioned but also the remaining 78000 cases to see if a review had been requested. Ofcom stated that the cost of this exercise would be in excess of £450 and therefore it was neither able to confirm nor deny that it held the information requested by the complainant.

The Investigation

Scope of the case

6. On 29 May 2008 the complainant contacted the Commissioner to complain that Ofcom had not answered his request for information.
7. The complainant also raised the issue regarding the length of time taken by Ofcom to complete their review. This is not addressed in this Notice because it is not a requirement of Part 1 of the Act. It is however covered under "other matters".

Chronology

8. The Commissioner wrote to the complainant on 13 November 2008 setting out his understanding of the complaint. In his letter to the public authority on the same date the Commissioner requested further information on the following:
 - Having identified the 250 cases, what would be the cost of analysing them with a view to establishing the number of those which indeed were requests for further reviews?
 - Explanation as to the need to review all 78000 cases when a pool of 250 cases had already been identified.
9. The complainant responded on 23 November 2008 and mentioned that Ofcom had not mentioned any timescale or monetary value in their initial reply. The complainant wanted to know if Ofcom could supply information up to the level of the "appropriate limit".

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10. On 3 December 2008, the Commissioner acknowledged the complainant's email and advised him that he would be looking into the issue of providing information up to the "appropriate limit".
11. On 15 December 2008 the public authority responded to the Commissioner's letter of 13 November, advising that they had conducted a trial run to determine how long it would take to review the 250 follow up cases.
12. Having considered the public authority's response, the Commissioner provided a copy of his assessment of the complaint to the complainant on 7 January 2009. The assessment concluded that the Commissioner was satisfied that the costing calculation provided by the public authority was both fair and reasonable. The Commissioner further advised that where a public authority has made a reasonable estimate that the "appropriate limit" would be exceeded then the public authority is under no obligation to undertake work up to that limit.
13. The complainant responded on 12 January 2009 and expressed dissatisfaction that he had not been able to obtain the information requested. The complainant however did not disagree with the Commissioner's findings that section 12 had been engaged.

Analysis

Substantive Procedural Matters

Section 12 (cost of compliance)

14. The full text of the legal provisions of the FOIA have been set out in the Legal Annex at the end of this Notice.
15. Section 12(1) of the Act does not oblige a public authority to comply with a request 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 Limits and Fees) Regulations 2004 set a cost limit of £450 for public authorities, calculated at a rate of £25 per hour, providing an effective limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
16. Regulation 4(3) provides that only certain activities may be taken into account when calculating the cost. Those activities are: -

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*“(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.”*

17. The public authority has provided to the Commissioner representations concerning the time and costs involved in reviewing all its records to ascertain the total number of complaint cases in the last two years that have not been upheld and then reviewed.
18. Ofcom conducted a trial run to determine how many requests for a review could be identified from a sample spreadsheet. The results were that a total of 8 cases were reviewed in one hour. Ofcom advised that the numbers would have been less if the person carrying out the trial run had to log the details of the outcome of each case on a separate spreadsheet in order to report back to the person making the FOI complaint. Based on this trial run, Ofcom estimated that the total number of hours that it would have taken to review the 250 follow up cases to be 31.25 which at a rate of £25/hour would have cost £781.25.
19. The Commissioner questioned the need for Ofcom to review all 78000 cases when 250 cases (where a review may have been requested) had already been identified. Ofcom advised that the 250 follow-up cases were those which, upon receipt, were assessed and deemed worthy of further investigation, and which were consequently given a new case reference, aligned to the original complaint and tagged as requests for review. There were however other instances where complainants wrote to Ofcom to express their displeasure in response to its findings, but where the complaints were not given separate case numbers and not linked to an original complaint. These cases were therefore not identified and isolated unlike the 250 follow-up cases.
20. Ofcom advised that whilst it assesses all of the complaints and comments that it receives, in many instances, correspondence relating to an original case would not be deemed to raise any substantive issues. In such cases the correspondence is not identified separately as a follow-up case but rather it is filed in the original complaint file along with other material relating to that complaint. Thus, requests for review which are deemed not to be cases to answer are contained within original complaint files without any external indication that correspondence from the complainant, post finding, has been received.

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21. Ofcom advised that in order to ensure that all correspondence containing requests for review is accounted for and to comply with the information request accurately and completely, they would need to review not only the 250 follow up cases but all 78000 cases. Ofcom calculated, using the results of the trial run, that it would take them approximately 9750 hours to review all 78000 at a cost of roughly £243,750.
22. In view of the above, the Commissioner accepts the authority's reasoning that the relevant cost limit of £450 would be exceeded in complying with the request. Section 12(1) has therefore been applied correctly.

Procedural matters

Section 1(1) (General right of access) and Section 10 (Time for compliance)

23. Section 1(1) of the Act provides that any person making a request for information to a public authority is entitled to (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. Under section 10(1), a public authority must inform a person making a request for information whether it holds the information requested, and communicate that information to the applicant, no later than the twentieth working day following the date of receipt.
24. The public authority originally advised the complainant on 13 March 2008 that they did not hold the information. On 22 May 2008, after the public authority had carried out an internal review, they advised the complainant that they were neither able to confirm or deny whether they held the information requested (although they did make reference at this stage to the cost limit). The Commissioner considers this was incorrect as the requested information is clearly held within the body of 78,000 cases. By failing to provide the complainant with the correct information no later than 20 working days after the information was requested, the public authority breached the requirements of section 1(1) (a) and section 10(1) of the Act.

Section 16 (duty to provide advice and assistance)

25. The public authority did not provide to the complainant advice as to how his request could be refined in order that it could be complied with without exceeding the cost limit. The public authority has argued in

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their letter to the Commissioner dated 15 December 2008 that it would not be able to provide meaningful advice as to how to refine the request. The Commissioner accepts that in view of the nature of the request and the way the information was held on the database, no meaningful advice could have been offered as to ways to refine the request in order to bring it within the cost limit.

Section 17 (refusal of request)

26. Section 17(5) provides that a public authority which, in relation to any request for information, is relying on a claim that section 12 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact. The public authority failed to do this.

The Decision

27. 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:
- Section 12(1), in that it correctly concluded that the cost limit of £450 would be exceeded in order to carry out a search of the records
 - Section 16(1), in that no meaningful advice could have been provided as to how to refine the information request.
28. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- Section 1(1)(a), in that it incorrectly concluded that the requested information was not held.
 - Section 10(1), in that the public authority failed to confirm the information was held within 20 working days.
 - Section 17(5), in that the public authority failed, in its response, to state that it was relying on section 12(1)

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Steps Required

29. The Commissioner does not require any steps to be taken.

Other matters

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

31. Ofcom did not provide a breakdown of the costs to the complainant; although it is not a statutory requirement, it would have been good practice. The Tribunal offered support for this approach in the case of Gowers and the London Borough of Camden in which it said that a public authority **should** demonstrate how their estimate has been calculated:

"... 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 might be able to refine or limit his request so as to come within the cost limit..."

32. Part VI of 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. 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 in 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 43 working days for an internal review to be completed, despite the publication of guidance on the matter.

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Right of Appeal

33. 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 21st day of December 2009

Signed

**Anne Jones
Assistant Commissioner**

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

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Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds

information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him

Section 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."

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."

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 ... 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

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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(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 notice stating that fact”.