

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 August 2011

Public Authority: Cardiff Council
Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Summary

The complainant requested information relating to the television programme Doctor Who. The Council refused the request on the basis that the estimated cost of compliance would exceed the appropriate limit as set out at section 12(1) of the Act and the Fees Regulations. In its internal review the Council stated that it was also relying on section 14(1) of the Act. The Commissioner has investigated and found that sections 12(1) and 14(1) of the Act are not engaged. The Commissioner requires that the Council now confirm or deny to the complainant if the information requested is held and, if held, disclose the information or issue a valid refusal notice under section 17(1) of the Act.

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 11 December 2010, the complainant submitted the following request to the Council relating to the period from 1 January 2010 up to the date of the request:
 - "1. *Could the city council please provide all communications (including emails) with the BBC which in any way relate to the television programme Doctor Who.*

2. *Could the council please provide all communications (including emails) with any utility company and or water provider and or energy company and or similar which in any way relates to the television programme Doctor Who.*
 3. *During the aforementioned period has the council received any written complaints which in any way relate to Doctor who. If so can it please provide copies of those complaints. Please feel free to redact the name of the complainant.*
 4. *During the aforementioned period has the council been in contact with any other public body about Doctor Who. If so, can it please provide copies of correspondence including e-mails".*
3. The Council issued a refusal notice on 14 December 2010 stating that to comply with the request would exceed the cost limit as defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'), and as such section 12(1) of the Act applied. In this refusal notice, the Council advised that it anticipated that information relevant to the request may be held within its Highways and Communications departments. It asked the complainant whether he would be happy to limit his request to information held by these departments in order to bring the request within the appropriate limit.
 4. On 14 December 2010, the complainant contacted the Council and requested an internal review of its decision regarding the request, stating that he did not accept that disclosure of information relating to one television programme over a limited period of time would exceed the appropriate limit.
 5. The Council provided the outcome of its internal review on 15 December 2010 and upheld its decision that to comply with the request would exceed the cost limit set out in the Fees Regulations. The Council also stated that, in the alternative, it considered that section 14(1) of the Act applied as the request was considered to be vexatious.

The Investigation

Scope of the case

6. On 20 December 2010 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 points:

- Whether the Council was correct in its application of section 12(1) to the request.
- Whether the Council was correct in its application of section 14(1) to the request.

Chronology

7. On 1 February 2011, the Commissioner wrote to the complainant and the Council to confirm that the complaint had been deemed eligible for formal consideration.
8. On 11 March 2011 the Commissioner wrote to the Council asking for further representations in relation to its application of section 12 of the Act, including whether it had aggregated the elements of the request for the purposes of calculating the cost of compliance with the request. The Commissioner also asked the Council to confirm whether it was also relying on section 14 as the basis for refusing the request, and if so, he asked for further arguments in support of its application of section 14.
9. The Commissioner telephoned the Council on 13 April 2011 to chase a response to his letter of 11 March 2011. He agreed an extension for the time to respond to 20 April 2011.
10. The Council responded to the Commissioner's enquiries on 15 April 2011. It confirmed that it was relying on sections 12(1) and 14(1) as the basis for refusing the request and provided further representations to support its position.

Analysis

Section 12 – cost of compliance exceeds appropriate limit

11. The Council confirmed that it is relying on section 12(1) as the basis for refusing the request. Section 12(1) of the Act provides that public authorities do not have to comply with requests where the estimated cost of complying exceeds the appropriate limit as specified by the Regulations. All sections of the legislation are reproduced in the attached legal annex.
12. Section 4(3) of the Regulations sets out the basis upon which an estimate can be made:

“(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only 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 hour."

13. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities, which includes the Council. This is equivalent to 18 hours work.
14. Section 12(4) of the Act provides that in certain cases a public authority can aggregate the cost of complying with requests. As part of the statutory instrument associated with section 12(1) of the Act, section 5 of the Regulations sets out the circumstances in which it may be appropriate to aggregate requests. This states that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:
 - a. by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - b. for the same or similar information to any extent; and
 - c. the subsequent request is received by the public authority within 60 working days of the previous request.

Has the complainant made one request with multiple parts or multiple requests in one letter?

15. Given the effect of section 12(4), the Commissioner has first considered whether the complainant's request of 11 December 2010 constituted a single request with multiple elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124].
16. Taking the Tribunal's decision in the *Fitzsimmons* appeal into consideration, the Commissioner would characterise the complainant's letter of 11 December 2010 as containing more than one request within a single item of correspondence.

Can any or all of the requests be aggregated?

17. Having established that the complainant made multiple requests in a single letter, the Commissioner has gone on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance.
18. Having considered the wording of the six parts of the request, the Commissioner has concluded that they can be aggregated for the purpose of calculating the cost of compliance, in accordance with section 12(4) of the Act and regulation 5 of the Regulations. This is because they follow an overarching theme and common thread relating to the communications about the television programme Doctor Who.
19. Having reached this conclusion, the Commissioner has gone on to consider the application of section 12(1).

Would compliance with the requests exceed the appropriate limit?

20. The Commissioner asked the Council to provide a detailed reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the request. The Commissioner asked that, when the Council provided these calculations, a description of the nature of the type of work involved was also included.
21. The Council's position is that, as the complainant has not agreed to its suggestion to limit his request to information held by its Highways and Communications departments (which the Council believe are the most likely departments to hold the information), it maintains that to process the request in its entirety would involve work beyond the costs limit, and as such section 12(1) applies.
22. In its internal review response, the Council stated that it has no corporate electronic records management system or repository. As a result, the only way it is able to comply with a request of this nature is to enquire of staff concerned. It added that, as it does not have a searchable repository, any searches it might make would not be thorough, as there is no guarantee that any information held falling within the scope of the request would even contain the phrase "Doctor Who".
23. The Council indicated that, in order to comply with the request, and in particular determining whether the information is held and locating the information, it would either have to send an email to all staff (option 1), or alternatively compile a list of around 300 staff at principal officer level and contact all of the principal officers (option 2) to ascertain whether any relevant information is held.

24. In relation to option 1, the Council confirmed it has around 6000 staff. Even allowing just minute for each officer to read and respond to the email, would equate to over 100 hours. In relation to option 2, the Council state it has around 300 staff at principal officer level and above. It estimates it would take one hour to compile a list of the relevant officers. The Council estimates that it would take these officers an average of 5 minutes each as some of the officers would need to conduct enquiries or searches to determine whether any information was held. The Council confirmed that its estimate is based on responding to similar requests relating to the same subject material. The Council advise that information relevant to the request is unlikely to be held in a case file of document repository system, but would more typically be held in personal email or shared folders.
25. In terms of retrieving and extracting information relevant to the request, the Council's position is that the time taken for these activities would, to an extent depend on the outcome of its consultation with staff. However, in relation to these activities the Council advised the Commissioner that "In all likelihood there would be very little information, so on the basis of previous similar requests possibly no more than 15-30 minutes".
26. The Commissioner asked the Council to provide a description of the type of work which would need to be undertaken in order to comply with the request, for example search X number of files – 1 hour. In response, the Council stated:
- "It is not a case of searching in one place. The applicant is asking for low level information which is of little significance to the Council – or indeed in our view to the public. It is likely to reside in numerous locations (if it exists). Nor can there be a simple basis of searching, as the applicant has not limited his request. For example one might suggest searching the mail server for 'doctor who', but that simply would not be 100% effective. The sort of material the applicant is seeking might e.g. be an email from the BBC seeking permission to film in High Street Cardiff. Only the officer dealing with that might (but might not) know from experience, timing, knowledge of filming schedules and contact whether it related to Doctor Who, Casualty, Torchwood etc."
27. The Council confirmed that it had not undertaken any sampling exercise in order to determine its cost estimate, as it does not feel that any sampling exercise would assist. Its reasoning for this is that:
- "Any sampling exercise is likely to produce a nil return if random, perhaps a positive return if targeted, but the applicant has declined our offer to do a targeted exercise"

28. The Council's internal review response stated that it would be necessary to consult with staff down to at least principal officer level to enquire whether any information falling within the scope of the request was held. In its internal review response the Council stated that there was "something in the region of 5-600" staff at this level. The Commissioner asked the Council whether principal officers in all departments would need to be consulted. He also asked the Council to provide details of the number of principal officers in each department it would need to consult and an explanation as to why information relevant to the request might be held by that officer or department. The Council confirmed that all principal officers would need to be consulted, of which there were approximately 300. The Council did not provide details of the numbers of principal officers in each department or why they were likely to hold the requested information, as it did not consider this to be relevant. The Council accepted, however, that there are principal officers who were "most unlikely to hold relevant information". However, it added that it could not rule out any particular officers or departments as the applicant had refused its proposal to limit its searches to those departments who were likely to hold information relevant to the request. It quantified this by way of an example that it might be considered unlikely that staff working in its Social Services or schools support unit would hold relevant information. However, if the BBC were filming outside or close to a school or children's home, or a complaint was received from a school it is possible that these contacts would be channelled through a manager working in these departments.
29. Whilst the Council has not provided a total estimate of the time taken to comply with the request, based on the representations put forward the Commissioner has assumed the following estimates:
- Option 1 – consult 6000 staff at 1 minute = 100 hours plus a maximum of 30 minutes to retrieve and extract the information.
Total 100.5 hours
 - Option 2 – 1 hour to compile a list of staff down to principal officer level. Consult all staff at principal officer level and above - 300 staff at 5 minutes = 25 hours plus a maximum of 30 minutes to retrieve and extract the information. **Total 26.5 hours**
30. The issue of what constitutes a reasonable estimate in relation to the cost limit was considered by the Information Tribunal in the case of *Roberts v the Information Commissioner*. The Commissioner is assisted by the Tribunal's approach as set out in paragraphs 9 -13 of the decision:
- "*Only an estimate is required*" (i.e. not a precise calculation)

- The costs estimate must be reasonable and only based on those activities described in regulation 4(3)
- Time spent considering exemptions or redactions cannot be taken into account
- Estimates cannot take into account the costs relating to data validation or communication
- The determination of a reasonable estimate can only be considered on a case-by-case basis and
- Any estimate should be "sensible, realistic and supported by cogent evidence".

31. The Tribunal went on to suggest that producing an estimate requires a process of both investigation and assessment/calculation. At paragraph 12, the Tribunal said:

"...The investigation will need to cover matters such as the amount of information covered by the request, its location, and the hourly rate of those who have the task of extracting it. The second stage will involve making an informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information..."

32. As to whether the cost estimate is reasonable in this case, the Commissioner notes first that the Council has been inconsistent throughout the correspondence relating to this request, with both the complainant and the Commissioner, about the number of staff it would need to consult with, and the time it would take to conduct such enquiries. In its refusal notice, the Council stated that it had 15,000 staff and it would potentially have to with enquire with "hundreds/thousands of officers to track down all relevant sources". It also stated that it would take each officer up to 10 minutes to deal with the enquiry. In its internal review response, the Council stated that, whilst it may not be necessary to contact all 15,000 employees, it would need to consult with all staff down to principal officer, and estimated the number of principal officers in the region of 5-600. In its response to the Commissioner of 15 April 2011, the Council stating it would need to either send an all staff email to around 6000 staff or consult with approximately 300 staff down to principal officer level.
33. The Commissioner accepts the Council's position that it would not be possible to carry out electronic searches in order to locate any relevant recorded information. He is therefore satisfied that the Council's estimate has been based on the quickest method of gathering the requesting information ie consulting with relevant staff at the Council. However, the Commissioner notes that, on a number of occasions, the Council has asserted, that as a result of dealing with similar requests, it knows in general terms the type of information it holds relevant to the request. It confirmed that the information it might hold would be in

relation to road closures, possible use of Council buildings, parks and other open spaces. As such, the departments who are likely to hold relevant information are its Highways and Communications department. The Commissioner accepts the Council's position that it is unable to rule out the possibility that other departments would hold information falling within the scope of the request and as such it would be necessary to consult with staff down to principal officer level in all departments.

34. The Council estimate that it would take each of the 300 staff, at principal officer level and above, approximately 5 minutes in order to carry out any relevant searches to determine whether any information was held. The Council has not provided any further evidence to support its estimate that it would take 5 minutes for each of the 300 staff to carry out any searches, or explained the processes that would need to be undertaken by each of these individuals. The Council stated that it had calculated the estimate based on dealing with previous requests. It added that locating any information that may exist was not a simple and straightforward task as it would typically be in personal email or shared folders as opposed to case files or within the Council's document repository system.
35. The Commissioner considers 5 minutes to be a reasonable estimate where any searches by individual staff need to be conducted. However, the Commissioner notes that both in its internal review response and in its response to the Commissioner of 15 April 2011, the Council maintain that it is very unlikely that some of these staff would hold relevant material. He also notes that the Council believes that any information relevant to the request is likely to be held within its Highways and Communications departments. Further, the Council believe that, based on its dealings with previous requests, it would only hold a small amount of information relevant to the request.
36. Based on the above, the Commissioner is not satisfied it would take each of the 300 staff above principal officer level 5 minutes in order to confirm whether or not relevant information was held. Further, in relation to option 1 put forward by the Council, it estimated if it were to send an "all staff" email to 6000 staff it would take each officer on average 1 minute to read and delete the email if no information was held. The Commissioner therefore considers that where any principal officer does not hold any relevant information, it is likely to only take them 1 minute to deal with the enquiry.
37. The Commissioner notes that, if for example 50% of the 300 principal officers hold no information, using an average figure of 1 minute for officers who hold no information and 5 minutes for officers who need to conduct relevant searches would bring the cost of compliance with the request to 17 hours, which is within the cost limit, as detailed below:

- Compile a list of staff above principal officer level (approximately 300) – 1 hour
- 150 staff who potentially could hold information to conduct relevant searches – 150 X 5 minutes = 12.5 hours
- 150 staff to read and delete email as no information held – 150 X 1 minute = 2.5 hours
- Retrieve and extract information – 30 to 60 minutes

38. The Commissioner has not been provided with enough evidence in support of the Council's application of section 12(1) to draw a conclusion that compliance would exceed the appropriate limit. In this regard, the Commissioner notes the remarks of the First-tier Tribunal (Information Rights) (formerly the Information Tribunal) in the case of *Alasdair Roberts & The Information Commissioner* (EA/2008/0050), that any estimate should be "*sensible, realistic and supported by cogent evidence*". The Council has failed to provide the Commissioner with a realistic description of the tasks involved in complying with the request. He has therefore been unable to form an adequate understanding of the costs which would be incurred by the Council. Consequently, the Commissioner has to conclude that the Council did not apply the exemption at section 12 correctly.

Section 14(1) – 'vexatious requests'

39. Section 14(1) of the Act states that a public authority need not comply with section 1(1) of the Act if it considers the request for information is vexatious.

40. There is no single test for what sorts of requests may be considered to be vexatious. Instead, each individual case is judged on its own merits taking into account all of the circumstances surrounding the request. In his Awareness Guidance No 22 'Vexatious and repeated requests'¹ the Commissioner has outlined a list of criteria which is useful to consider when determining whether a request for information is vexatious or not. The list of criteria is as follows:

- (i) Could the request fairly be seen as obsessive or manifestly unreasonable?
- (ii) Is the request harassing the authority or causing distress to staff?

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http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

- (iii) Would complying with the request impose a significant burden in terms of expense and distraction?
 - (iv) Is the request designed to cause disruption or annoyance?
 - (v) Does the request lack any serious purpose or value?
41. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130):
- "a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach..."* (paragraph 20).
42. When determining whether a request should be deemed vexatious and whether one or more of the above criteria applies, the Commissioner can consider the wider context and history of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form part of a wider pattern of behaviour that makes it vexatious. Nevertheless, the Commissioner recognises that it is the request and not the requester that must be vexatious in order for the provision to apply.
43. In this case the Council believe the request meets the criteria at paragraph 40(i), (iii), (iv), (v) above.

Could the request fairly be seen as obsessive or manifestly unreasonable?

44. It is the Commissioner's view that an obsessive request or a request that is manifestly unreasonable is often a strong indication of vexatiousness. Contributory factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.
45. The Council believes the request to be manifestly unreasonable but not obsessive. The Council submitted limited arguments in relation to why it believes the request, without limitation, to be manifestly unreasonable. Instead, it referred primarily to representations it had put forward in support of why it considers compliance with the request would impose a

significant burden and why the request has no serious purpose of value, which are considered in paragraphs 50 to 51 and 55 to 60 below. The Council did however state that:

“As an experienced national journalist we consider that it is reasonable to expect the applicant to have regard to your [the Commissioner’s] ‘Charter for responsible freedom of information requests’². Key criteria in this include:

‘Could the request be narrowed or refocused to avoid this burden?
Can the public authority help you refocus your request’”

46. The Council is of the view that the complainant has not had any regard for this guidance as he has not, to date, entered into any dialogue with the Council to refine his request, despite offers it has made to do so.
47. The Commissioner accepts that the complainant in this case may have made previous similar requests to the public authority. The Council made reference to this but it provided no detail. The Commissioner is aware of one previous similar request the complainant made which was the subject of a complaint he had previously investigated. He notes, however, that this complaint related to a request made in November 2008.
48. The Commissioner notes that, in the complainant’s request for internal review, he clearly states he does not accept that provision of information over a limited period relating to one television programme would exceed the appropriate limit. The Commissioner considers it quite possible that if the complainant felt strongly that compliance with his request would not exceed the appropriate limit, this could lead to a reluctance on his part to limit, refine or reduce the request.
49. The Commissioner notes that the Council considers the request to be manifestly unreasonable, but not obsessive. The word “manifestly” means that a request should be obviously or clearly unreasonable. There should be no doubt as to whether the request was unreasonable. Volume and complexity alone may not be sufficient to make a request manifestly unreasonable. In this case and in the absence of detailed arguments from the Council, the Commissioner considers there is insufficient evidence to suggest that it is reasonable to characterise this request as being manifestly unreasonable.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/its_public_information_foi%20charter_final.pdf

Would complying with the request impose a significant burden in terms of expense and distraction?

50. The Council considers this request, without any refinement, would cause a significant burden in terms of both expense and distraction from other duties. The Council referred to the Informal Tribunal in the case of *Rugby v Information Commissioner and Blackpool, Fylde and Wyre Hospitals NHS Trust, EA/2009/0103*, where the Tribunal found that responding to the request as delivered *“would likely entail substantial and disproportionate financial and administrative burdens for the public authority”*. The Council stated that:

“On any interpretation as this is very low level information which is never likely to be captured in any specific system, or limited to one particular person, we will need to contact a considerable number of staff, in the expectation that most of them will have nothing to contribute. Cumulatively this is costly and distracting”.

51. The Council’s arguments relating to this request creating a significant burden in terms of expense and distraction appear to focus on the costs and time it would take to comply with the request, in light of the fact that the complainant has not agreed to reduce or refine the scope of request. The Commissioner has considered the costs incurred with complying with this request in his analysis of the Council’s application of section 12 in paragraphs 20 to 38 of this Notice. His conclusion is that section 12 is not engaged. Whilst the Commissioner notes that the complainant has not agreed to limit the scope of this request, along the lines outlined by the Council, he does not accept that this fact alone would result in request being reasonably categorised as burdensome. Consequently, the Commissioner gives no weight to the Council’s statement that compliance would create a significant burden in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

52. The Council submitted very limited arguments in support of its position that the request is designed to cause disruption or annoyance. The Council simply referred to the fact that the complainant has not agreed to limit the scope of the request to information held within specific departments within the Council. It believes that in refusing to limit the scope of the request, it is designed to cause disruption or annoyance.

53. As this factor relates to the requester’s intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious.

54. In the Commissioner's view there is insufficient evidence to comment on the intention of the complainant but notes that the Council's arguments refer again to the requester having not agreed to limit the scope of the request, which overlap with its representations in relation to the first two factors which have been considered above.

Does the request lack any serious purpose or value?

55. The Council does not consider the request, as formulated, has any serious purpose or value. The Council advise that the complainant has submitted previous similar requests relating to the filming of Dr Who. It stated that:

"When that [a previous request relating to the Dr Who programme] was made it might have been reasonable for the applicant to assume that filming for Dr Who might be quite a burden on the Council or the City of Cardiff. He now knows that that is not the case. Formal road closures are extremely rare. Usually it is not necessary and all that is required is a temporary traffic stop – assisted by the police not the Council. Most arrangements are extremely informal – little more than a courtesy call to let us know what is happening, or to ensure that there is sufficient space for parking."

56. The Council accept that there is a continuing public interest in the effect of Dr Who on the City and Council and believe that a properly targeted request about that effect, for example relating to road closures, whether there has been a need to divert water supplies, whether any Council buildings or staff have been utilised, would be reasonable. The Council believe that that there can be no serious purpose or value in framing a request in such broad terms for "all communications....which in any way relate to..." and declining its invitation to limit the scope to information held within specific Council departments, where the Council believes it is more likely that any information would be held.
57. The Council state that it has dealt with previous requests for information from the applicant which have been formulated in a similarly broad manner. It advised that, in relation to previous requests, the applicant had in most cases declined to enter any discussions to limit the scope of the request. The Council believe that this pattern of behaviour is sufficient to "make it incumbent on the applicant to justify both the request itself and the pattern of behaviour (declining to enter into any dialog aimed at limiting the burden)".
58. Whether a request has value is not of significance given that the Act is not concerned with the motives of an applicant, but rather in promoting transparency for its own sake. However, the Commissioner acknowledges that should any authority be able to show that a request

has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.

59. The Commissioner notes that the Council's arguments in relation to this factor again focus on the fact that the complainant has not agreed to limit the scope of his request. He also notes that the Council accepts that there is a continuing public interest in the effect of the filming of Dr Who on the City and Council itself.
60. Having considered the representations put forward by the Council the Commissioner is not satisfied that it has been shown that the request lacks any serious purpose or value.

Summary

61. Section 14 of the Act is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the Act and get in the way of answering other requests.
62. The Commissioner has considered the Council's arguments in support of its decision to refuse the complainant's request as vexatious and has found no evidence to support its position. The main arguments that the Council has submitted in support of its application of section 14 relate to the cost of complying with the request, and the fact that the complainant has not agreed to limit the scope of the request.
63. The Commissioner has concluded earlier in this notice that the Council has failed to demonstrate that the cost of complying with the request exceeds the appropriate limit. The Commissioner does not accept that the fact the complainant has not agreed to reduce the scope of the request would in itself make the request vexatious, particularly in light of the fact that the complainant indicated he did not agree that complying with the request would exceed the appropriate limit.
64. The Commissioner is satisfied that, on the evidence which has been provided to him, the request cannot reasonably be argued to be vexatious and the Council has incorrectly applied the provisions of section 14(1) of the Act to the complainant's request.

Procedural Requirements

Section 16 – Advice and assistance

65. Section 16(1) of the Act provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so.

66. The Code of Practice issued under section 45 of the Act (the Code) provides guidance on good practice to public authorities in carrying out their duties in relation to the Act. The Code includes suggestions in relation to the nature of the advice and assistance that public authorities should provide in relation to section 16 of the Act. Paragraph 14 of the Code recommends that:

"14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."

67. The Commissioner notes that in its refusal letter of 14 December 2010 and its internal review response of 15 December 2011, the Council made the complainant aware of its obligation under the Act to provide advice and assistance. The Council suggested the request be refined or reduced to bring it within the appropriate limit. The Council stated that it anticipated that information relevant to the request may be held within its Highways and Communications departments and asked the complainant whether he would be happy to narrow his request to information held within these departments.

68. The Commissioner considers that the Council explored the possibility of narrowing the scope of the request and provided the complainant with details of the departments which it believed were likely to hold information relevant to the request. He has therefore found that the public authority has complied with section 16(1) of the Act in this case.

The Decision

69. 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 Council complied with its obligations under section 16(1) of the Act.

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

- The Council incorrectly applied section 12(1) to the request.

- The Council incorrectly applied section 14(1) to the request.

Steps Required

71. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Confirm or deny to the complainant if the requested information is held and either disclose this information or provide a valid refusal notice in accordance with the requirements of section 17(1) of the Act.

72. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

73. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

74. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

75. 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.

76. 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 30th day of August 2011

Signed

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

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

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

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

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."

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."

Vexatious or Repeated Requests

Section 14(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

Section 14(2) provides that –

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."

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 and 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(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 -

(c) states that fact,

(d) specifies the exemption in question, and

(e) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(2) states –

"Where–

(f) in relation to any request for information, a public authority is, as respects any information, relying on a claim–

1. 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

2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(g) 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 -

- (h) 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
- (i) 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 –

- (j) the public authority is relying on a claim that section 14 applies,
- (k) 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
- (l) 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 –

- (m) 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
- (n) contain particulars of the right conferred by section 50."