IN THE FIRST-TIER TRIBUNAL **Case No. EA/2012/0130**
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50423229
Dated: 23 May 2012

Appellant:	**Peter Cain**
First Respondent:	**Information Commissioner**
Second Respondent:	**The London Borough of Islington**
Date of hearing:	**18 December 2012 at Field House**
Date of decision:	**10 April 2013**

Before

Anisa Dhanji
Judge

and

Anne Chafer
David Wilkinson
Panel Members

Representation

For the Appellant: in person
For the First Respondent: Ms Hannah Slarks, Counsel
For the Second Respondent: Mr Michael Smith, Solicitor

Subject matter

Freedom of Information Act 2000, section 12 - cost of compliance and appropriate limit; late claiming of section 14 exemption; whether public authority has complied with section 16

Case law

All Party Parliamentary Group on Extraordinary Rendition v the Information Commissioner and the Ministry of Defence [2001] UKUT 153

DEFRA v Information Commissioner and Simon Birket and the Home Office [2011] UKUT 17

Robin Williams v Information Commissioner and Cardiff & Vale NHS Trust (EA/2008/0042)

Urmenyi v Information commissioner and London Borough of Sutton EA/2006/0093

IN THE FIRST-TIER TRIBUNAL **Case No. EA/2012/0130**
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

SUBSTITUTED DECISION NOTICE

Dated: 10 April 2013

Public Authority: London Borough of Islington

Address of Public Authority: Town Hall
Upper Street
London
N1 2UD

Name of complainant: Mr Peter Cain

The Substituted Decision:

The following Decision Notice is substituted in place of the Commissioner's Decision Notice dated 23 May 2012.

The Public Authority has failed to comply with its duty under section 16 of the Freedom of Information Act 2000, to provide advice and assistance.

The Public Authority is now required to provide advice and assistance to the Complainant in order that he can revise his request, if he chooses to do so, such that he can receive some of the information requested within the cost limit provided for under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

The Public Authority must take the steps referred to above within 35 calendar days of the date of this Substituted Decision Notice.

Except as set out above, the Commissioner's Decision Notice shall remain in effect.

Signed

Anisa Dhanji
Judge

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr Peter Cain (the "Appellant"), against a Decision Notice issued by the Information Commissioner (the "Commissioner"), on 23 May 2012.

2. The Appellant is a leaseholder of a flat in Thornhill Houses, a building owned by the London Borough of Islington (the "Council"). The Council has a right, under the terms of the Appellant's lease, to collect service charges from him in respect of communal services and repairs in Thornhill Houses. The Appellant disputes the amount of service charges levied by the Council.

3. The Appellant requested access, under the Freedom of Information Act 2000 ("FOIA"), to certain information concerning the service charges. The Council refused the request. The Commissioner upheld the refusal and the Appellant has appealed to the First-tier Tribunal challenging the Commissioner's decision.

The Request for information

4. The Appellant's request, made on 22 September 2011, was for:

"FULL copies of ALL original (Excel) spreadsheets for ALL service charge headings as applied to Thornhill Houses for as long as records allow (min. of 6 years)… Include all associated spreadsheets, and other associated documentation (including copies of invoices) to which any cells may referenced by others… Information already provided may be excluded, PROVIDED that it has not changed."

5. The Council replied on 20 October 2011, refusing to provide the information due to restrictions it considered were placed on it by the Landlord and Tenant Act 1985. The Appellant complained to the Commissioner who advised the Council that the refusal notice was inadequate.

6. On 19 December 2011, following an internal review, the Council wrote to the Appellant refusing the request under section 12 of FOIA on the basis that the cost of complying with the request would exceed the appropriate limit as set out in Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations").

The Complaint to the Commissioner

7. On 1 November 2011, the Appellant complained to the Commissioner under section 50 of FOIA. The Commissioner undertook enquiries, following

which he issued a Decision Notice. The Commissioner noted that the Council had estimated that it would take a total of 22.5 hours at a cost of £562.50 to comply with the Appellant's request. The cost limit specified by the Regulations is £450, calculated at the rate of £25 per person per hour, i.e. 18 hours in total. The Commissioner considered that the Council's estimate was "sensible, realistic and supported by cogent evidence". He was satisfied that in producing its estimate, the Council had only taken into account the activities it was permitted to by Regulation 4(3).

8. The appellant had also complained that the Council had not given him any advice as to how his request could be brought within the appropriate cost limit. The Commissioner considered whether the Council had complied with its obligations under section 16 which imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. The Commissioner noted that that the Appellant had already received some of the requested information, but that he still wanted the information be provided in full. The Commissioner considered that this showed that the Appellant was not willing to accept anything less than a full response. In those circumstances, the Commissioner considered that the Council was not required to take any steps under section 16.

9. The Commissioner found, however, that the Council was in breach of section 17(5) of FOIA, pursuant to which a public authority that is relying on a claim that section 12 applies, must give the applicant a notice stating that fact within 20 working days of receipt of the request. Although the Council had responded within 20 working days, it had not cited section 12, because it had relied, instead, on section 22 of the Landlord and Tenant Act 1985. Although the Council had subsequently acknowledged its mistake and had then cited section 12, this was outside the 20 day period and the Council had been in breach, therefore, of section 17(5).

The Appeal to the Tribunal

10. The Appellant has appealed against the Decision Notice. He challenges the Commissioner's findings in relation to section 12, as well section 16. The Council was joined in the appeal as the Second Respondent. The Council has not cross-appealed against the Commissioner's findings in relation to section 17(5).

11. The Appellant requested an oral hearing. Prior to the hearing, the parties lodged an agreed bundle comprising some 430 pages. The Appellant sought leave to lodge additional material at the hearing, but conceded that these were not strictly relevant to the issues in this appeal. The parties also each lodged a skeleton argument. The Appellant and Council also lodged reply skeleton arguments.

12. At the hearing, we heard evidence from Leila Ridley, an Information Compliance Manager, employed by the Council. She adopted her witness statement and was examined and cross-examined, and we also asked her a few questions. The Appellant also gave evidence and he too, was cross-

examined, and questioned by the panel. We will refer to their evidence below, together with our findings.

The Tribunal's Jurisdiction

13. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other Notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.

14. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, as in this case, the Tribunal will often receive evidence that was not before the Commissioner.

The Statutory Framework

15. Under section 1 of FOIA, any person who makes a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.

16. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA or if certain other provisions apply. In the present case, the Council has invoked sections 12 and 14. These sections do not provide an exemption as such. Their effect is simply to render inapplicable the general right of access to information contained in section 1(1).

17. As already noted, there are two key provisions relevant to this appeal, namely, sections 12 and 16. Section 12 of FOIA provides that a public authority is not required to comply with a request for information if it estimates that the costs of doing so will exceed the "appropriate limit". Specifically, section 12 provides as follows:

> *(1) 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.*
>
> *(2) 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.*
>
> *(3) 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.*

(4) 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.

(5) 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 to be estimated.

18. The Regulations prescribe the appropriate limits. For a public authority, like the Council, the appropriate limit is £450 calculated at the rate of £25 per person per hour.

19. Regulation 4 sets out what the public authority is allowed to take into consideration in estimating its costs of compliance. Regulation 5 permits public authorities to aggregate the costs of complying with two or more requests for information by the same person where the requests relate to the same or similar information or are received within 60 consecutive working days.

20. Section 16 provides as follows:

(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.

21. As we will explain below, section 14 also has a bearing on this appeal. Section 14 sets out two grounds on which a public authority may refuse a request. The first is where the request is vexatious. The second is where the request is identical or substantially similar to a previous request that the public authority has already complied with. Specifically, section 14 provides as follows:

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

(2) 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 the previous request and the making of the current request.

Issues

22. There are three issues to be addressed in this appeal, namely:

(a) Can the Council rely on section 14 when it had not done so at the time it
refused the request?

(b) Did the Council properly refuse the request under section 12?

(c) Did the Council act in breach of section 16?

Findings and Reasons

Can the Council rely on section 14 when it had not done so at the time it refused the request?

23. As already noted, following its internal review, the Council relied only on section 12 to refuse the request. The Council has now sought to rely also on section 14. At the hearing, the Commissioner and the Appellant objected to the Council's reliance on section 14 on the basis that there had not been sufficient notice that the Council intended to rely on that provision. Ms Slarks said that the Commissioner was not able to take a position in relation to section 14 without having a proper opportunity to consider the Council's arguments and evidence. She asserted that the Council had still not put forward fully reasoned arguments in relation to section 14. The Appellant maintained that there was no proper basis for the Council to rely on section 14. He had not arrived at the hearing prepared to argue that point and would be prejudiced if the Council was now allowed to rely on section 14.

24. It may be helpful if we set out set out a brief chronology as to how and when the Council sought to rely on section 14. The appeal was received by the Tribunal on 20th June 2012. On 24th of August 2012, the Council lodged a response to the appellant's grounds of appeal. In that response, the Council said, in paragraph 8, (comprising four lines) that the request should have been refused under section 14 as well, but that it recognised that this could not be done retrospectively. On 28 August 2012, the Commissioner responded to this by e mail, explaining that it was open to a public authority to make a late claim under section 14, but that it was a matter for the Council to decide whether or not it is seeking to make such a late claim, and to support this appropriately.

25. Notwithstanding this helpful explanation from the Commissioner (which he had not been obliged to provide), the Council did not come forward at that point to say that it now wished to rely on section 14. It was not until it lodged its skeleton argument dated 7 December 2012 (shortly before the hearing on 18 December), that the Council raised the issue again. It asserted that section 14 applied to the request at the relevant time. It relied, in particular, on a decision notice dated 13th of August 2012 in relation to different requests made by the Appellant, which the Commissioner agreed were vexatious.

26. The issue as to whether a public authority can rely on an exemption after the expiry of the time limit in section 17 of FOIA or after its internal review, has been a controversial one. The current position is that set out in the Upper Tribunal's decision in **DEFRA v Information Commissioner and Simon Birkett and the Home Office [2011] UKUT 17**. We accept that pursuant to that decision, the Council is entitled, as of right, to rely on an exemption that it had not relied on when it refused the request.

27. However, as Judge Jacobs made clear in that decision, a public authority's entitlement to rely on an exemption late is subject to any case management direction or decision made by the Tribunal under the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009. In the present case, to have allowed the Council to rely on section 14 at such a late stage would have required the hearing to be adjourned. We were satisfied that the other parties did not have proper notice of the Council's intention to rely on section 14. It was, in our view, inadequate for the Council to have indicated only in its Skeleton Argument, shortly before the hearing, that it intended to rely on section 14, without putting the parties (not to mention the Tribunal), expressly on notice that it was changing, in a fundamental way, the basis on which it was putting forward its case. Whatever misapprehension the Council may have been under in relation to whether or not it could rely on an exemption at a late stage (we bear in mind in this regard that the Council is legally represented and that the decision in **DBERR** dates back to January 2011), it had been notified of the correct position by the Commissioner, on 28 August 2012, and the Commissioner's decision notice that it seeks to rely on is dated 13 August 2012. It had had ample opportunity, therefore, to reconsider its position, had it wished to do so. The Council has provided no explanation for why it did not seek to rely on section 14 sooner, particularly given its evidence that from February 2011, the Appellant had submitted over 73 requests.

28. To allow the point to be taken so late would have caused unfairness to the other parties who had prepared their case on a different basis and who would have had to either argue the section 14 point without having had sufficient notice, or to incur the additional cost and inconvenience of an adjournment. We considered that this would be disproportionate and contrary to the overriding objective in Rule 2, in particular Rule 2(a), which requires the Tribunal to deal with cases fairly and justly, in ways that are proportionate to the importance of the case, the complexity of the issue, the anticipated cost and the resources of the parties. For all these reasons, we refused the Council permission to rely on section 14 without an adjournment and we also refused to grant an adjournment.

29. We would make two further observations in relation to the Council's late reliance on section 14. First, a three member panel of the Upper Tribunal in **All Party Parliamentary Group on Extraordinary Rendition v the Information Commissioner and the Ministry of Defence [2001] UKUT 153** (the "APPGER" case), considered that Judge Jacobs' decision in **DBERR** did not apply where a public authority sought to rely on section 12 when it had not done so at the time of refusal. The Upper Tribunal considered that there was distinction between that situation, and the position as regards a late claiming of the substantive exemptions set out in

Part II of FOIA. We note that section 14, like section12, comes within Part I of the Act, and does not form part of the substantive exemptions in Part II. This is not a point that was argued before us, but we mention it simply to highlight that there may be reason to doubt whether **DBERR** is in fact applicable where the authority seeks to rely on section 14 late in the day, and therefore whether the Council would be entitled, in any event, to seek to rely on section 14 at such a late stage.

30. Second, had we considered the section 14 issue substantively, to the extent the Council relies on the finding by the Commissioner that entirely different requests made by the Appellant were vexatious, it is unlikely that that factor would have been accorded much weight. The Tribunal is not bound by the decisions of the Commissioner. More importantly, section 14 requires a consideration of the particular request in issue. The fact that other requests made by the Appellant may have been vexatious does not mean that the request in issue here would be vexatious.

Did the Council properly refuse the request under section 12?

31. As already noted, section 12 provides that a public authority is not required to comply with a request for information if it estimates that the costs of doing so will exceed the "appropriate limit" which, in this case is £450 or 18 hours.

32. Regulation 4 sets out the costs that the public authority is allowed to take into consideration in estimating its costs of compliance. It has not been argued in the present case that the Council has taken into account any costs that it is not permitted to.

33. It is not in dispute that it is for a public authority to estimate whether the appropriate cost limit would be exceeded. However, a public authority's estimate must be reasonable: see **Urmenyi v Information Commissioner and London Borough of Sutton EA/2006/0093** (cited with approval by the Upper Tribunal in the **APPGER** case). The Commissioner and the Tribunal can enquire into the facts or assumptions that have been taken into account in arriving at the estimate and they can also enquire about whether the estimate is made up on other facts and assumptions which ought not to have been taken into account.

34. In the present case, the Council has set out how it arrived at its time estimate in a document headed "Freedom of Information Act - Calculating Effort and Cost Form", at page 343 of the agreed bundle. It estimated that locating the information would take 1 hour. Retrieving the information would take a further 3.5 hours, and extracting the information would take 18 hours. It thus arrived at a total of 22.5 hours at a cost of £562, which exceeds the limit specified in the Regulations by 4 ½ hours. The Council has provided an explanation for its estimate under the respective headings, "Locating the Information", "Retrieving the Information", and "Extracting the Information".

35. In the Appellant's grounds of appeal, he challenges the Council's time estimate. However, he does not say why he considers that the work involved should not take more than 18 hours. The Tribunal made directions on 30 July 2012, requiring the Appellant to provide further particulars,

including, as to why he disagreed with the Council's estimates. In his response, the Appellant did not take issue, specifically, with the Council's estimates other than to say that he does not accept that the information could not be easily and rapidly accessed. He says, instead, that he had obtained additional information from the Council. That information did not need to be provided again and should reduce the time estimate by at least 4 hours. He has also repeatedly offered to attend the Council's offices to help physically in any way and that this would also save at least 4 hours.

36. There is no merit in the Appellant's first point. The Council has acknowledged, from the outset, that it had already provided some information which fell within the scope of the Appellant's request, namely, information for the years 2009/2010 and 2010/2011. It did not include the cost of providing this information and based its time estimate only on providing information for a 4 year period.

37. As regards the Appellant's argument that the time estimate could have been reduced if he had been allowed to help, the Council and Commissioner say, and we agree, that the Council could not be expected to take up the Appellant's offer to assist them in searching for and photocopying any relevant information. There would be a number of security and practical obstacles to allowing the Appellant to do that, not least of all that the Appellant might thereby have sight of unrelated personal data, leaving the Council open to a claim that it had breached data protection legislation. Also, he would need to be supervised and trained to access the various data bases, and that itself would have cost implications.

38. Part of the reason the Council has given for why it estimates it would take 22½ hours to comply with the request has to do with the way in which some of the information is held, as summarised in the Commissioner's Decision Notice at paragraphs 19 and 20. The Appellant takes issue with the way in which the Council holds the information and says that it is because of this that responding to his requests will take more time than it should. However, it is not open to the Tribunal to disallow reliance upon section 12 on the basis that the public authority could have organised its records more efficiently. See: **Robin Williams v Information Commissioner and Cardiff & Vale NHS Trust (EA/2008/0042)**.

39. We see no reason on the evidence before us to doubt that the Council's estimate is a reasonable one, taking into account reasonable facts and assumptions. The Appellant has not put forward any reason why the Council's estimate should not be challenged. In relation to section 12, we dismiss the Appellant's appeal.

Did the Council act in breach of section 16?

40. Section 16 imposes an obligation on a public authority to provide advice and assistance to a person making a request, but only so far as it would be reasonable to expect it to do so.

41. As already noted, one of the Appellant's complaints to the Commissioner was that the Council had been in breach of section 16 because it had never given him advice as to how his request could be

brought within the appropriate cost limit. The Commissioner noted, in his Decision Notice, that that the Appellant had already received some of the requested information, but that he still wanted the information to be provided in full. The Commissioner considered that this showed that the Appellant was not willing to accept anything less than a full response. In those circumstances, the Commissioner considered that the Council was not required to take any steps under section 16.

42. In response, the Appellant says that his request for "everything" was not because he was unwilling to compromise, but rather, it was an attempt to avoid the need to request further information. The Appellant also says that he has repeatedly offered to compromise, meet the Council's staff, and to help where possible. However, he asserts that the Council are more interested in preventing disclosure and have failed to offer any clarification, explanation, or help, and that therefore, they have failed to comply with their duty under section 16.

43. In the appeal before us, after considering the Appellant's position further, the Commissioner has now accepted that the Council did fail to provide advice and assistance and was in breach, therefore, of section 16. He noted, in particular, that since the Council's time estimate does not greatly exceed the specified limit in the Regulations, it would likely have been possible to provide meaningful advice and assistance such that the request could have been brought within the appropriate cost limit. The Commissioner asks the Tribunal to substitute the Decision Notice to find that the Council is in breach of section 16, and to require the Council to assist the Appellant to submit a refined version of his request such that he could receive some information within the appropriate cost limit.

44. In response, the Council says that:

(a) it is perverse for the Commissioner, having concluded in respect of other requests, that the Appellant is engaged in an obsessive, harassing and costly campaign, to require the Council to assist him in this campaign, and, in any event, a public authority is not required to assist in requests that are vexatious;

(b) the section 16 duty is only to "consider" providing advice and assistance, and this, the Council has done;

(c) given the Appellant's on-going behaviour, as described in the evidence of Leila Ridley, nothing the Council could reasonably have provided, would have satisfied the Appellant; and

(d) the Council has in fact made numerous efforts to assist the Appellant in respect of this and other requests.

We will deal with each of these points in turn.

45. First, as already noted, although other requests made by the Appellant may have been considered by the Commissioner to be vexatious, that does not mean that this request is also vexatious. There has been no finding by the Commissioner, nor by the Tribunal that this request is

vexatious, and indeed, as already noted, the Council did not refuse the request on that basis.

46. We consider that there is also no merit in the argument that section 16 only requires a public authority to "consider" providing advice and assistance. Clearly, a public authority is not required to provide advice and assistance in every case. There will be cases when it is not reasonable to expect it to do so at all, and it may be that in such cases, a public authority will not be in breach of section 16 if it considers providing advice and assistance but decides not do so. However, the public authority would still need to show, if the point is taken, as it is here, why it is not reasonable to expect it to provide advice and assistance.

47. We have considered the witness statement of Leila Ridley, in this regard. She is the Council's Information Compliance Manager. She has held that post since January 2011 and has overall responsibility for dealing with information requests received by the Council. She is also the final escalation point for external complaints raised on information matters. She says that since February 2011, the Appellant has submitted over 73 information requests and that 14 of these have been escalated to the Commissioner. The vast majority of the requests relate to service charge calculations for the management of Thornhill Houses, where he is a leaseholder. His requests and complaints have been considered at the highest level, and that assistance has been provided, including in a meeting between the Appellant and Homes for Islington's CEO on 8 September 2011. In addition to meetings and numerous emails, the Council has provided the Appellant with advice and assistance on how to phrase his requests in an attempt to better understand what he was asking for and advising at the outset what limits there might be on responding to his requests. Despite the Council's best efforts, the Appellant has continued to bombard them with emails and requests and is invariably dissatisfied with the responses that he receives and continues to believe that the Council is deliberately hiding or withholding information from him.

48. Ms Ridley's witness statement focuses largely on section 14 considerations and says very little about what advice and assistance was provided, if any, in relation to this particular request. We asked Ms Ridley at the hearing, what advice and assistance had in fact been provided in relation to this request. She said she was not sure, but it is likely that some advice and assistance was provided. She was not able to say, however, whether anyone had contacted the Appellant to discuss his request, notwithstanding that at the time of making the request, the Appellant had specifically stated that it would help if he could be contacted to clarify the request. The Appellant denies that he was contacted and denies that he was provided with any advice or assistance in elation to this request.

49. When it was put to Ms Ridley that since the 18 hour time limit had been exceeded by only a few hours, perhaps there had been a real possibility of the request being reframed to come within the time limit, she said she could not comment. After further questioning, it became clear that Ms Ridley was not in fact aware of the Council's time estimates in relation to this request. The document at page 343 of the agreed bundle was shown to

her. She said that she had not seen the document before and had not been involved with the request at the time of the refusal and review. She also conceded that the meeting with the CEO which had taken place on 11 September was some two weeks before the request in issue here, and therefore did not relate to this particular request but to a request made some five weeks previously. It was put to her that the Council could have offered to provide the information requested for 3 years rather than 4 and that this would have reduced the time estimate by 4½ hours. Alternatively, instead of information in relation to 10 heads of charges, it could have offered to provide information in relation only to 7 heads of charges and this would have reduced the time estimate by approximately 5½ hours. Ms Ridley accepted that had the request been narrowed in this way, it could have been complied with within the cost limit. She also confirmed that the Appellant had not been advised how he could narrow his request in this way.

50. We are satisfied, having heard Ms Ridley's evidence, that the Council did not provide any advice and assistance in relation to this request. We are also satisfied, notwithstanding the difficulties the Council was having with other requests made by the Appellant, given that the time estimate for this particular request exceeded the specified cost limit by only 4½ hours, and given the simple and obvious possibilities of providing the information for either fewer years or providing less data for each year, it would have been reasonable to expect the Council to advise the Appellant that his request could be narrowed so as to bring the request within the cost limit. It may be that the Appellant would not have agreed to narrow his request. That would be a matter for the Appellant. However, it would have been a simple matter to put forward these possibilities. We find that in these circumstances the Council was in breach of its obligations under section 16.

51. For the avoidance of doubt, we do not say that the Council needed to do more than to explain how the Appellant could revise his request to come within the cost limit and to consider any other reasonable possibilities the Appellant may have raised. The Council was not required to engage in protracted correspondence with the Appellant. If the Appellant had chosen not to take up the Council's suggestions and not to revise his request, that would have been a matter for him.

52. At the hearing, the Appellant made an additional point which he does not appear to have made before, or at least not made before with any clarity, He says that he would have been willing to accept what he describes as the "raw data" and that this would have brought the time for compliance well within the 18 hour limit. However, the request the Appellant made was for *"…spreadsheets for ALL service charge headings as applied to Thornhill Houses..."* and not for any raw data, whether making up the spreadsheets or otherwise. There is also no evidence before us to suggest that the Appellant had indicated to the Council at any time prior to the hearing that he would have been prepared to accept something different. We make no finding against the Council for not offering to provide the Appellant with the "raw data" when that is not what the Appellant had asked for in his request and where there had been no indication from the Appellant that the raw data would satisfy his request.

Decision

53. For all the reasons set out above, we dismiss the appeal in relation to section 12, but allow the appeal in relation to section 16.

54. The Council is now required to take the steps set out in the Substituted Decision Notice.

Signed

Anisa Dhanji
Judge

Date: 10 April 2013