

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 16 July 2009

Public Authority: The Governing Body of Wood Green High School
Address: Wood Green Road
Wednesbury
West Midlands
WS10 9QU

Summary

The complainant made a request to the Governing Body of Wood Green High School (the "School") for information relating to the letting of School facilities. The School provided its lettings policy but refused to provide the complainant with the rest of the requested information and relied upon the provisions contained at sections 12 and 14 of the Freedom of Information Act 2000 (the "Act"). The School asserted that to comply with the request would exceed the £450 cost limit and therefore it was not obliged to do so under section 12 of the Act. The School also deemed the request vexatious under section 14(1) of the Act. Upon consideration of all of the circumstances of the case the Commissioner considers that section 12(1) was correctly engaged in this case. The Commissioner did not therefore go on to consider the School's application of section 14. The Commissioner does however consider that the School breached section 16(1) and section 17(5) of the Act in its handling of this request.

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. The complainant made a request on 26 April 2007 for the provision of the following information:-

“For the last 5 years

- Copies of the lettings policy.
 - The date in each year that the letting policy was agreed by the Governing Body together with agendas and minutes of the meeting.
 - In the event of increases in charges or amendments to the letting policy agendas and minutes of the Governing Body.
 - A detailed breakdown of all the dates that Sandwell Tigers/Wood Green United are being invoiced for.
 - Evidence of overtime payments or other payments made to staff covering these lettings. Essentially I am asking the school to provide evidence of the need to levy a sessional charge. If necessary the names of the staff in question can be removed.
 - The details of all school lettings together with times, dates and amounts charged.
 - All payments made to the school by the pub team, I believe the name may be West Park. Please include with this all dates on which the team have been charged over the last five years and include evidence that payment was received by the school.”
3. On 21 May 2007 the School wrote to the complainant in relation to his request for information. The School explained that the information requested was complex and although it was unable to give a definitive costing, an initial charge of £600 would be required in order for it to comply with the request. The School did however provide a copy of its current lettings policy.
 4. As the complainant was dissatisfied with the response he had received he made a formal complaint to the ICO on 24 January 2008.
 5. The ICO deemed that the response he had received was not an adequate refusal notice under section 17 of the Act. Therefore upon the Commissioner's involvement the School wrote to the complainant again on 22 February 2008. It stated that it was refusing to comply with the complainant's request for information as it deemed his request vexatious under section 14 of the Act. It confirmed that it did not have an appeal process regarding the FOI request.

The Investigation

Scope of the case

6. On 25 February 2008 the complainant resubmitted his complaint to the ICO as he was dissatisfied with the response he had received from the School in relation to his information request.

7. The Commissioner's investigation will consider whether or not the School dealt with the complainant's request for information in accordance with all of its obligations under the Act.

Chronology

8. The Commissioner wrote to the School on 6 March 2009. The Commissioner explained that based upon the correspondence on the case, it was his understanding that the School's position was not that the complainant had already been provided with the requested information but that the request fell within the wider criteria of a vexatious request described in the Commissioner's guidance number 22 on section 14. A copy of which was provided to the School.
9. The School responded to the Commissioner on 30 March 2009. The School provided further arguments in support of its application of section 14.
10. On 8 April 2009 the Commissioner wrote again to the School. The Commissioner noted that the School had mentioned substantial time and financial implications of complying with the request within its section 14 arguments. Furthermore in its initial response to the complainant dated 21 May 2007 (which was deemed to be a defective refusal notice) costs issues were raised as and the school indicated that it wished to charge for complying with the request. The Commissioner therefore invited the school to consider whether section 12 which relates to costs may be applicable in this case. The Commissioner explained that under section 12 if the cost limit is exceeded (in this case the cost limit would be £450), a public authority is not obliged to comply with a request. In determining whether or not the cost limit is exceeded a public authority should estimate the costs it reasonably expects to incur in relation to the following:-
 - Determining whether it holds the information.
 - Locating the information, or a document which may contain the information.
 - Retrieving the information, or a document which may contain the information.
 - Extracting the information from a document containing it.

The Commissioner explained that a public authority can attribute a maximum charge of £25 per hour for time spent dealing with a request for information, therefore the time limit for dealing with a request under the Act is 18 hours. The School was therefore invited to provide a detailed explanation as to the breakdown of costs with reference to the headings above.

11. The Commissioner also asked the School if it wished to provide any further arguments in relation to its application of section 14.

12. On 14 May 2009 the School responded to the Commissioner. The School provided further arguments in relation to its application of section 14.
13. In addition the School confirmed that it did wish to rely upon the costs provision contained at section 12 of the Act. The School confirmed that whilst it did hold the requested information, some was on school premises, though much of it was at the Local Authority or archived. Furthermore it stated that some of the information was available electronically but most of it was paper based.
14. The School confirmed that bullet point 1 of the request (detailed at paragraph 2 of this Notice) had been provided to the complainant. The School stated that bullet point 2 of the request was already available to the complainant, it explained that as a Governor of the School the complainant had full access to copies of minutes of meetings. Finally the School stated that bullet points 3 – 7 were the parts of the request that would be costly and time consuming.
15. The School confirmed that over the five year period that the complainant had requested the information, it approximated that around 6,500 lettings had taken place. It stated that this estimate was based upon 35 lettings per week on average, over 38 weeks of term time for a five year period. It explained that each letting has the following information associated with it which is relevant to the scope of the request:
- Booking form.
 - A completed Sandwell LA permit (held by Local Authority).
 - Invoice and receipt for payment.
 - Banking details (dependant upon how payment is made).
 - Caretakers claim form – these are for a monthly period so to determine the claim for 1 letting further documentation/calculation is required (held by Local Authority).
 - Payroll information on caretakers payments (held by Local Authority).
16. The School confirmed again that much of the information was paper based. It stated that a member of staff would need to find all of the archived information or contact the Local Authority to obtain it, copy it and delete names. The School provided the following calculation of the time it would take to access the relevant information for just one letting:-
- | | |
|---|------------|
| To locate the Sandwell permit and booking form | 20 minutes |
| To copy, delete the names and re-copy invoice and receipts | 5 minutes |
| To locate, print, copy, delete names and re-copy invoice and receipts | 5 minutes |
| To access the caretakers claims forms | 10minutes |

To copy, delete names and re-copy	5 minutes
To access payroll details for caretakers payments	10 minutes
To copy, delete names and re-copy paperwork	10 minutes
Total	60 minutes

17. The School confirmed that the above estimate did not include the cost of refiling the documents, the costs incurred in staff carrying out communication activities and time taken to organise the information in a meaningful format.
18. The School explained that upon the basis of the 1 hour per letting estimate, as there are approximately 6500 lettings within the time frame of the request, it would take 6500 hours to comply with the request. The School confirmed that at a rate of £25 per hour, the cost of complying with this request would therefore far exceed the £450 cost limit.
19. The School confirmed that it undertook the work in relation to one sample letting to determine how long it would take to locate, retrieve and extract all of the relevant information. It took 50 minutes to complete all of the work required for the one letting.
20. The School explained that even if the time estimate was reduced to 1 minute per letting this would still far exceed the £450 cost limit due to the number of lettings relevant to the time frame of the request.
21. The School stated that in its original letter to the complainant it had approximated the cost of complying with his request at £600. It confirmed that this was only an initial assessment, however it was over the cost limit.
22. The School concluded that it believed that section 12 would be applicable in this case and therefore it was not obliged to comply with the request.

Analysis

Procedural matters

Section 1(1)

23. Section 1(1) of the Act states 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.”

24. The Commissioner has considered whether the School has complied with section 1(1)(a) of the Act.
25. The complainant made his request on 26 April 2007 and the School provided a response on 21 May 2007. The complainant was dissatisfied with this response and made a formal complaint to the Commissioner on 24 January 2008. The Commissioner wrote to the School on 20 February 2008 and explained that the response it had sent to the complainant did not constitute an adequate refusal notice under the Act. The School therefore provided a further response on 22 February 2008 in accordance with the Act.
26. Even though the School's response of 21 May 2007 did not constitute an adequate refusal notice under the Act it did indicate that the requested information was held. Therefore the Commissioner considers that the School did confirm that the requested information was held within the statutory time for compliance and therefore did comply with section 1(1)(a) of the Act.

Section 12(1)

27. Section 12(1) of the Act states 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.”

28. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 set the appropriate limit at £450 for the public authority in question.
29. To determine whether the School applied section 12 of the Act correctly the Commissioner has considered the School's response as set out in the 'Chronology' section above.
30. The Commissioner notes that in this case the complainant has made more than one request within a single item of correspondence. Section 12(4) provides that, in certain circumstances set out in the Statutory Instrument 2004 No. 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" ("the Fees Regulations"), requests can be aggregated so that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the

two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information. In this case the Commissioner considers that all of the requests relate to the issue of lettings at the School and is therefore satisfied that the requests can be aggregated.

31. Notwithstanding the fact that the School has suggested that some of the requested information may have been provided to the complainant in relation to bullet point 1 of the request and that some information may already be available to the complainant through his role as School governor in relation to bullet point 2 of the request, the Commissioner has aggregated the whole of the request dated 26 April 2007 in order to determine whether section 12 would be applicable.
32. The School has focused its cost estimate on bullet points 5 and 6 of the request. The Commissioner has therefore focused on the Schools cost estimate in order to comply with bullet points 5 and 6. As all of the requests will be aggregated, if the cost limit would be exceeded in relation to bullet points 5 and 6, then the School would not be obliged to comply with any of the requests.
33. The Commissioner notes that the School has indicated that it believed it would take approximately 1 hour per letting to access the information relevant to bullet points 5 and 6 of the request. The Commissioner also notes that the School has calculated that there will be around 6500 lettings relevant to five year time frame of these requests. Within the School's estimate of 1 hour per letting, it has included time required to redact names from the information. The Commissioner does not consider that the time taken to redact personal data from the information is a relevant consideration under section 12. However even discounting the time the School has included to redact names from the information, the Commissioner considers that the work required to locate, retrieve and extract the information per letting would still be substantial.
34. Furthermore due to the high number of lettings relevant to this request, the Commissioner notes even if the time requirement per letting was reduced to only 1 minute this would still exceed the £450 cost limit as the School has indicated that the cost would be £2,708. The School has also highlighted that even if the time requirement was reduced to 1 minute and the time frame was reduced by over half so that the relevant number of lettings would be approximately 3000, this would cost £1,250 and therefore still exceeds the £450 cost limit.
35. Whilst the School has suggested that some of the information requested is available electronically it has stated that most of the information requested is only available in paper format. Therefore the Commissioner considers that even if some of the information requested

at bullet points 5 and 6 could be provided electronically, most could not, and therefore the School would have to carry out the paper based exercise it has described for most of the information. Due to the large volume of relevant lettings and that the School's estimate vastly exceeds the £450 cost limit, the Commissioner considers that even if some of the information could be provided electronically this would not sufficiently reduce the time and cost requirements to bring compliance with the request within the appropriate limit.

36. Due to the high number of lettings relevant to this request and that most of the requested information is held in paper format, the Commissioner considers that the estimate of time and costs provided by the School is reasonable. The Commissioner therefore considers that section 12 of the Act was correctly engaged in this case.
37. As the Commissioner considers that section 12 would be engaged in this case he has not gone on to consider the School's application of section 14.
38. The Commissioner has not explored any further the issue that the School has suggested that bullet point 1 of the request has been provided to the complainant or that bullet point 2 of the request would be readily accessible by the complainant. This is because the Commissioner has considered the aggregated requests in their entirety when assessing costs under the fees limit and has concluded that section 12 would be applicable.

Section 16(1)

39. Section 16(1) of the Act requires a public authority to provide reasonable advice and assistance to persons who make a request. Section 16(2) outlines 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 section 16(1).
40. The code of practice outlines that 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-focusing their request, information may be able to be supplied for a lower or no fee.
41. The School did not advise the complainant as to the extent of information it would be able to provide within the scope of the request within the £450 cost limit. The School was therefore in breach of section 16, as it failed to provide advice and assistance to the complainant at the time the request was made.

Section 17(5)

42. Section 17(5) states 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.”

43. The Commissioner has therefore considered whether the School has complied with section 17(5) in its handling of the request.

44. Although the School alluded to the issue of costs in its response dated 21 May 2007 it did not implicitly state that it wished to rely upon section 12. The School provided its section 12 arguments to the Commissioner when he invited it to do so as part of his investigation. Therefore the School has not notified the complainant of its application of section 12 and therefore has not complied with section 17(5) of the Act.

The Decision

45. The Commissioner's decision is that the School correctly applied section 12 in this case as to comply with the request would exceed the £450 cost limit.

46. The Commissioner does however consider that the School breached section 16(1) of the Act as it failed to provide the complainant with appropriate advice and assistance.

47. The Commissioner considers that the School also breached section 17(5) of the Act in its handling of the complainant's request.

Steps Required

48. The Commissioner requires the School to provide the complainant with advice and assistance as to what information it may be able to provide within the appropriate cost limit in accordance with its obligations under section 16(1) of the Act.

49. The Commissioner requires the steps to be complied with by no later than 10 October 2009.

Other Matters

50. Due to the fact that the School will close on 17 July 2009 and will not reopen until 7 September 2009, the Commissioner has calculated 35 days to comply with the steps required commencing from the date of this notice up until the date the School closes and then from the date the School reopens.

Right of Appeal

51. 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.

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 16th day of July 2009

Signed

**Gerrard Tracey
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.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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”.

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision

will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

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

Section 17(7) provides that –

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

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