

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 08 July 2009

Public Authority: Financial Services Authority (FSA)
Address: 25 The North Colonnade
Canary Wharf
London
E14 5HS

Summary

The complainant submitted 9 requests to the Financial Services Authority (FSA) all of which focused on the FSA's regulation of Northern Rock. The FSA refused these requests on the basis that the aggregated cost of complying with them was estimated to exceed the appropriate cost limit of £450. The Commissioner has considered the circumstances of this refusal and has concluded that all of the requests are sufficiently 'similar' so the FSA is entitled to aggregate the cost of complying with them. Furthermore, the Commissioner is satisfied that the FSA has provided a reasonable estimate which demonstrates that the cost of complying with the first request would exceed £450 and thus the FSA is entitled to refuse to fulfil any of the 9 requests.

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 submitted the following request to the Financial Services Authority ('FSA') in October 2007:

'for each of the years 2004, 2004, 2005, 2006 and 2007 up to 1 August:

1. The number of meetings held in each year between officials of the FSA and the directors or management or advisors of Northern Rock plc or any of its subsidiaries;

2. The purpose of each of those meetings in each year;
 3. The number of FSA officials involved in each of those meetings each year;
 4. The duration of each of those meetings each year;
 5. The names and/or position and/or grade and years of FSA service of the FSA officials involved in those meetings;
 6. The names and/or position and/or number of those individuals from Northern Rock or its advisors present at those meetings;
 7. How many of the FSA officials involved in those meetings with Northern Rock were still employed by the FSA as at August 1 2007;
 8. How many of the FSA officials involved in those meetings with Northern Rock were still involved in the supervision of Northern Rock as at 1 August 2007'.
3. The FSA responded on 20 November 2007 and explained that it could not provide the information requested within the appropriate cost limit of £450, which equated to 18 hours work. The FSA therefore explained that it was relying on section 12 of the Act as the basis upon which to refuse these requests. The FSA explained to the complainant that even if his requests could be answered within the cost limit it was likely that most, if not all, of the information would have been exempt by virtue of a number of exemptions contained in Part II of the Act, namely sections 36 (effective conduct of public affairs), 40 (personal data) and 43 (commercial interests).
4. On 23 November 2007 the complainant asked for an internal review of this decision.
5. The FSA wrote to the complainant on 21 December 2007 and explained that it had undertaken an internal review and this had concluded that section 12 had been correctly applied. In order to support this decision the FSA provided the complainant with a description of the steps it would need to undertake in order to locate and extract the relevant information and why such a process, in the FSA's opinion, would greatly exceed the cost limit. The FSA also explained to the complainant that in initially refusing these requests it had considered section 16 of the Act which requires public authorities to provide applicants with reasonable advice and assistance and, usually, when section 12 had been applied the FSA's usual practice was to ask the requestor to refine the request. However, in this case the FSA explained that it did not propose to do so because of the large amount of information falling within the scope of the original requests and because it did not appear possible to refine them further to bring it within the cost limit. Nevertheless the FSA informed the complainant that it had re-considered what effect a restriction on the time period stated in the requests would make, i.e. from 1 January 2004 to 1 August 2007 to 1 January 2005 to 9 August 2007 (which would fit within the time period for information collated by the FSA's

Internal Audit Division which had reviewed the FSA's regulation of Northern Rock) and it remained of the view that the cost of complying with such restricted requests would still exceed the cost limit.

6. Following this correspondence, the complainant submitted a number of revised requests in a letter dated 3 January 2008. This letter sought:
- '1. The number of meetings held during 2005, 2006 and 2007 up to August 1 between FSA officials and the directors or management or advisors of Northern Rock plc or its subsidiaries and the dates of those meetings;
 2. The number of meetings held during 2005, 2006 and 2007 up to August 1 between Sir Callum McCarthy and the directors or management or advisors of Northern Rock plc or its subsidiaries and the dates of those meetings;
 3. The number of meetings held during 2005, 2006 and 2007 up to August 1 between John Tiner and the directors or management or advisors of Northern Rock plc or its subsidiaries and the dates of those meetings;
 4. The number of meetings held during 2005, 2006 and 2007 up to August 1 between Hector Sants and the directors or management or advisors of Northern Rock plc or its subsidiaries and the dates of those meetings;
 5. The number of meetings held during 2005, 2006 and 2007 up to August 1 between Clive Briault and the directors or management or advisors of Northern Rock plc or its subsidiaries and the dates of those meetings;
 6. The number of internal FSA meetings attended by Sir Callum McCarthy during 2005, 2006, and 2007 up to August 1 at which Northern Rock plc was discussed and the dates of those meetings;
 7. The number of internal FSA meetings attended by John Tiner during 2005, 2006, and 2007 up to August 1 at which Northern Rock plc was discussed and the dates of those meetings;
 8. The number of internal FSA meetings attended by Hector Sants during 2005, 2006, and 2007 up to August 1 at which Northern Rock plc was discussed and the dates of those meetings;
 9. The number of internal FSA meetings attended by Clive Briault during 2005, 2006, and 2007 up to August 1 at which Northern Rock plc was discussed and the dates of those meetings'.
7. The FSA responded to this revised request on 31 January 2008 and explained that it had also concluded that the cost of responding to these requests would exceed the appropriate cost limit. In order to support this conclusion the FSA provided the complainant with a detailed description of the steps it would have to take in order to locate and extract the relevant information and why such a process would significantly exceed the appropriate cost limit of £450. The FSA's

response of 31 January 2008 also indicated that even if it could provide the information requested within the cost limit, at the present time it was likely to conclude that most, if not all, of the requested information would be exempt from disclosure on the basis of a number of exemptions contained within Part II of the Act namely: section 29 (the economy); section 36 (prejudice to the effective conduct of the FSA's public affairs) and section 43 (commercial interests). The FSA went on to provide the complainant with a brief explanation as to why it believed that each of the exemptions may apply and why it felt that the public interest was likely to favour maintaining the exemptions.

8. The complainant contacted the FSA on 8 February 2008 and asked for a review of its decision. The complainant suggested that the FSA's refusal of his refined requests was disingenuous given that in the FSA's response to his original request it had acknowledged that 'the FSA's Internal Audit Division was collating and reviewing information for the period 1 January 2005 to 9 August 2007' which was the time period covered by his refined request. Therefore the complainant argued that most, if not all, of the information he had requested must have now been collated within the FSA for the purposes of this comprehensive review. In particular the complainant suggested that it was hard to believe that because this review process had been undertaken it would require an extra 172 hours of work to review each calendar page of the FSA officials identified in his request (this was the amount of time the FSA had estimated it would take to review the diaries of the four individuals referred to in requests 2 to 5 of the complainant's letter of 3 January 2008). In his letter of 8 February 2008 the complainant also set out why he believed the various exemptions referred to by the FSA in its previous letter would not prevent disclosure of the information he had requested.
9. The FSA informed the complainant of the outcome of the internal review on 27 March 2008. The FSA explained that the internal review had concluded that the decision to refuse his requests on the basis of section 12 had been upheld and provided the complainant with further details of the nature of the processes which would need to be undertaken in order for his requests to be fulfilled. In relation to the complainant's comments about its own review of its supervisory approach for Northern Rock, the FSA confirmed that its Internal Audit Division had collated and reviewed information in relation to the FSA's supervision of Northern Rock plc for the period 1 January 2005 to 9 August 2007. However, the FSA explained that this review did not go into the same level of detail as the complainant's request. The FSA also explained that it was its usual practice to ask a requester to refine their request. However, in this case it did not propose to do so because of the large amount of material held in relation to his requests and because it did not appear possible to refine them further in order to bring them within the cost limit; and also because this set of requests was already, in part, a refinement of the previous requests submitted in October 2007.

The Investigation

Scope of the case

10. On 8 April 2008 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant confirmed that he was only appealing the FSA's refusal of the requests contained in his second letter, i.e. the one submitted on 3 January 2008, and referred the Commissioner to his arguments as set out in his letters to the FSA dated 3 January and 8 February 2008. In particular the complainant noted that he considered there to be a significant public interest in the disclosure of the information he had requested and that he remained of the view that most, if not all, of the information he had requested had already been collated by the FSA by its Internal Audit Division when it reviewed its regulation of Northern Rock and thus could be provided within the cost limit.

Chronology

11. Due to a backlog of complaints about public authorities' compliance with the Act, the Commissioner was not able to begin his investigation of this complaint immediately. Therefore it was not until 25 February 2009 that the Commissioner wrote to the FSA in relation to this complaint. The Commissioner asked the FSA to provide further details to support its decision to refuse the requests of 3 January 2009 on the basis of section 12. In particular the Commissioner asked the FSA to explain why the information collated by its Internal Audit Division for its own review of how it had supervised Northern Rock could not be used to fulfil the complainant's request within the cost limit. The Commissioner also asked the FSA to clarify whether it had sought to aggregate the cost of all 9 requests contained within the complainant's letter of 3 January 2009 on the basis of section 12(4) of the Act.¹
12. The FSA provided the Commissioner with a substantive response on 7 May 2009 which set out its response to the various points the Commissioner has raised. In particular, the FSA confirmed that it did aggregate the estimated cost of answering the 9 requests on the basis of that they were on a similar theme, namely Northern Rock. Consequently, the FSA noted that if it estimated that answering one of requests exceeded the appropriate limit then it was not obliged to respond to any of the other 8 requests contained within the 3 January 2008 letter. The FSA noted that this was indeed the case as it had estimated that the cost of answering the first request alone would exceed the appropriate cost limit.

¹ Section 12(4) allows a public authority to aggregate the estimated cost of complying with two or more similar requests if they were submitted by the same person within 60 working days and are on a similar topic.

Background

13. In October 2007 the Chief Executive of the FSA asked the FSA's director of internal audit to carry out a lessons learned review of the FSA's supervision of Northern Rock plc during the period 1 January 2005 to 9 August 2007.
14. In March 2008 the FSA published the executive summary of the internal report as a result of the review, along with key sections of the report itself, including the Terms of Reference and 'Recommendations and Actions' section. In April 2008 the FSA published a full version of the internal audit report with redactions made to protect commercial and individual confidentiality. Copies of these documents can be viewed on the FSA's website at:
http://www.fsa.gov.uk/pages/Library/Other_publications/Miscellaneous/2008/nr.shtml
15. The four individuals named in requests 2 to 9 held the following positions at the FSA during the period covered by the complainant's requests: Sir Callum McCarthy – Chairman; John Tiner – Chief Executive until July 2007; Hector Sants – Chief Executive from July 2007 (previously Managing Director, Wholesale and Institutional Markets); Clive Briault – Managing Director, Retail Markets.

Analysis

Section 12 – cost of compliance exceeds appropriate limit

16. The Commissioner has set out below what section 12 of the Act provides for; then set out the basis upon which the FSA has argued that it can rely on section 12 to refuse the requests submitted on 3 January 2008; and then set out why he has concluded that the FSA were correct to rely on section 12.
17. Section 12(1) of the Act provides that public authorities do not have to comply with a request where the estimated cost of responding to that request exceeds the appropriate limit as specified by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
18. 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 of the costs it reasonably expects to incur in relation to the request in-

 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.'

19. Furthermore section 12(4) of the Act provides that where a public authority receives two or more requests on a similar nature from the same individual or different persons acting in concert, then the estimated cost of complying with any of the requests is taken to be the estimated costs of complying with all of them. Regulation 5 confirms that requests which a public authority chooses to aggregate must 'relate, to any extent, to the same or similar information' and be received by the public authority within any sixty consecutive working day period.
20. The Commissioner is conscious of the comments made by the Information Tribunal in its decision in *Fitzsimmons v Information Commissioner and DCMS* (EA/2007/0124) and the implications they have for this case. In this decision the Tribunal confirmed that the test for aggregating requests as set in Regulation 5 of the Regulations is very wide; requests only need to relate to any extent to the same or similar information in order to be aggregated. The Commissioner takes the view that requests will be 'similar' where there is an overarching theme or common thread running between them in terms of the nature of the information that has been requested.
21. Furthermore, and again to follow the approach taken by the Tribunal in *Fitzsimmons*, in cases such as this where the complainant has submitted one piece of correspondence which includes a number of requests, in the Commissioner's opinion technically speaking, multiple requests within a single item of correspondence are separate requests for the purpose of section 12. Therefore, the complainant's letter of 3 January 2008 contains 9 separate requests as opposed to 1 request with 9 separate limbs.

The FSA's position

22. In correspondence with the complainant the FSA provided a detailed explanation of the steps it would need to undertake to fulfil his requests and an estimate of the time it would take to undertake these activities:
23. In relation to the first request the FSA provided the following description of the process and time taken to fulfil this request:
24. The material it held about Northern Rock which was relevant to this request was contained in at least 78 lever arch paper files. It estimated that it would take on average 15 minutes to review and edit each file to locate and extract the relevant information which equated to 19 hours to review all files. In addition the FSA explained that it held a significant amount of information electronically which would also have to be searched (the FSA did not provide an estimate of the time it would take to search this electronic information). Furthermore the FSA explained that even if it collated all of this information contained within the established paper files on Northern Rock this would be unlikely to give a complete

and accurate picture as this information would not give details of any ad hoc or informal meetings or telephone conferences where Northern Rock plc or its subsidiaries may have been discussed. Therefore, it would need to ascertain which FSA employees, both current and former, worked in the supervision of Northern Rock plc or its subsidiaries during the relevant time period and then conduct a search of their diaries in order to ascertain whether any meetings were held between them and the directors, management or advisors of Northern Rock or its subsidiaries. The FSA suggested that this exercise would take a considerable amount of time and thus take the cost of complying with the first request further over the cost limit.

25. In relation to requests 2 to 5, the FSA provided the following explanation of how it would fulfil these requests:
26. In addition to the work described above in relation to the first request, it would need to review the diaries of the four individuals named in the requests for the relevant period in question, in order to ascertain whether any meetings were held between them and the directors, management or advisers of Northern Rock plc or its subsidiaries. The FSA estimated that there were approximately 650 working days in the time period requested and that it would take on average 4 minutes per page to review and edit each calendar page to locate and extract the relevant information which would come to over 43 hours per diary and a total of 172 hours for all four diaries.
27. In relation to requests 6 to 9, the FSA provided the following explanation of how it would fulfil these requests:
28. It would need to conduct a search of the relevant diaries as described in relation to requests 2 to 5 in order to determine whether any internal meetings relating to Northern Rock plc or its subsidiaries were scheduled into the diaries. In addition, it would need to review the 78 files mentioned in relation to request 1 to locate and retrieve any meeting minutes for certain internal meetings (e.g. FSA Board meetings) during the relevant time period to ascertain whether Northern Rock plc or its subsidiaries were discussed and whether any of the four named individuals attended these meetings. Furthermore, the FSA explained that the 78 files may not contain all the relevant internal meeting minutes or may only contain extracts of such meeting minutes with no mention of the meeting attendees which means that the FSA would need to undertake further searches in order to ascertain whether there were any further meetings attended by these individuals.
29. In response to the Commissioner's enquiries the FSA provided the following information and points in order to clarify and further support its position that section 12 provided a basis upon which to refuse to fulfil the requests:
30. The FSA confirmed to the Commissioner that it did aggregate the 9 requests contained within the complainant's letter dated 3 January 2008 because it considered them to all be on a similar theme, namely Northern Rock. Therefore, the FSA's position was that if the estimated cost of fulfilling one of the requests exceeded £450 it was not obliged to respond to any of the 9 requests.

31. The FSA acknowledged that although there was considerable overlap between the scope of the work carried out by its Internal Audit team and the information requested by the complainant, the focus of the two was different. The report published following the work carried out by the Internal Audit team included the following terms of reference:
- ‘3. Internal Audit will review the supervisory approach for Northern Rock...In particular it will review whether the FSA’s prevailing framework for assessing risk was appropriately applied....
- ‘5....The review team will exclude other areas of supervisory focus unless deemed appropriate by work emerging from the review’.
32. The FSA noted that the way in which the complainant’s requests were constructed meant that its searches would have to be detailed and wide ranging to ensure that all the information the FSA held, regardless of its significance, was located. The FSA acknowledged that although the report does mention a number of visits to Northern Rock and meetings that took place this does not equate to the level of detail the complainant was seeking, i.e. a record of all meetings involving Northern Rock plc and its subsidiaries.
33. The FSA explained that the diaries of the individuals named in the complainant’s requests 2 to 9 are held electronically so electronic searches could be carried out. However, the FSA explained that diary entries would not be in a prescribed format and details of appointments may not necessarily be held electronically so it may need to undertake manual searches in order to locate meeting notes and minutes in order to determine whether Northern Rock was discussed. Furthermore, the FSA re-iterated its argument that for requests 6 to 9 the diary entries would not note whether the four individuals had attended meetings at which Northern Rock was discussed incidentally but where Northern Rock was not noted as the subject of the meeting in the diary entry. This would also make it necessary for the FSA to search for meeting notes and minutes of meetings where Northern Rock may have been discussed in order that it located all of the information falling within the scope of the complainant’s requests.

The Commissioner’s position

34. In light of the Tribunal’s comments in *Fitzsimmons* quoted above at paragraph 20 the Commissioner is satisfied that the FSA can aggregate the cost of complying with the 9 separate requests contained in the complainant’s letter of 3 January 2008. This is because in the Commissioner’s opinion the 9 requests all focus on the FSA’s regulation of Northern Rock, and more specifically, all 9 requests focus on the number of meetings various individuals had with Northern Rock, and thus the requests can correctly be said to be on the same or similar theme.
35. Therefore the Commissioner accepts that the FSA can rely on section 12(4) as the basis to refuse to respond to all 9 requests simply if the cost of complying with just 1 of these requests exceeds the appropriate cost limit.

36. In considering estimates relied upon by public authorities in relation to section 12, the Commissioner has followed the approach of the Tribunal in *Alasdair Roberts v Information Commissioner* (EA/2008/0050) at paragraphs 9 to 13 in which the Tribunal confirmed that the approach of deciding whether an estimate was reasonable involved consideration of a number of issues, including:
- A public authority only has to provide an estimate rather than 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'.²
37. In relation to fulfilling the first request, the Commissioner accepts that an estimate of 15 minutes to review the contents of lever arch file is a reasonable estimate given that such files contain several hundred pages of paper. Although the process of extracting the information relevant to request 1 is a relatively simple one - essentially creating a tally of the number of times FSA officials met with the directors or management or advisors of Northern Rock plc or its subsidiaries and compiling a list of the dates of any such meetings, in order to create the tally and the list of dates, all of the information contained within a file would need to be read carefully. Thus the Commissioner accepts that an estimate of 15 minutes to review each lever arch file is realistic and when multiplied by the number of files, 78, provides an estimate which marginally exceeds the appropriate cost limit, namely 19 hours.
38. The Commissioner accepts that given the broad scope of the first request, i.e. it is seeking the total number of all meetings between FSA officials and the directors or management or advisors of Northern Rock plc or its subsidiaries, then in order to fulfil this request it needs to ensure that it also locates all recorded information it holds about any ad hoc or informal meetings or telephone conferences. The Commissioner understands that the 78 files referred to the FSA are basically its 'Northern Rock' files but that does not mean that they will contain details of any ad hoc or informal meetings or telephone conferences FSA staff may have had with representatives of Northern Rock. The Commissioner therefore accepts that the FSA will need to conduct searches beyond the 78 files in order to ensure that it has located details of all meetings between any FSA official and representatives of Northern Rock plc or its subsidiaries.
39. The Commissioner understands that in order to fulfil this exercise the FSA would need to identify current and former FSA staff involved in the supervision of Northern Rock and then undertake a search of their diaries in order to identify any

² [Alasdair Roberts v Information Commissioner \(EA/2008/0050\)](#)

further information relevant to this request. The Commissioner considers this to be a reasonable and logical approach to this task. The Commissioner notes that the FSA has not provided an actual figure for how long these additional searches – i.e. additional to the search of the 78 files – would take. However, on the basis of the time the FSA has estimated it would take to search the diaries of the four individuals for the period in question, 43 hours per diary, and the fact that the executive summary of the report notes that there were 65 FSA staff, both former and current involved in the regulation of Northern Rock, the Commissioner accepts that the process of searching and extracting these diaries for information falling within the scope of request 1 would be likely to significantly extend the time taken to fulfil this request.

40. On the basis of the above, the Commissioner is satisfied that it would take in excess of 18 hours to fulfil request 1.
41. In relation to requests 2 to 5, the Commissioner understands that some, though not all, of the information relevant to these requests would be contained within the 78 files which the FSA would have searched in order to fulfil the first request. However, the Commissioner accepts that the most logical way to locate all of the information falling within the scope of these requests, which comprises the dates which each individual met 'the directors or management or advisors of Northern Rock plc or its subsidiaries' and the dates of each meeting - is to search the diaries of the four individuals named in the requests. The Commissioner also notes that there are approximately 650 working days in the period covered by these requests. He also accepts that as there is not a prescribed format for recording information in calendars the FSA would therefore need to electronically search the individuals' diaries as well as conducting manual searches of meeting notes and minutes in order to ensure that all relevant meetings and their respective dates were identified.
42. However, in the Commissioner's opinion an estimate of 4 minutes per day for each diary may be seen as a little excessive: presumably given that the diaries are held electronically they could be searched relatively quickly and the relevant information extracted more quickly than 4 minutes per day. Moreover, the FSA's estimate does not take into account the fact that the four individuals will not have been in the office for the full 650 working days given that they would have taken periods of annual leave.
43. Nevertheless, as noted above, in order to locate all the relevant information the FSA would also need to conduct manual searches of meeting notes and minutes, as well as electronic searches of diaries and the process of locating, extracting and retrieving the relevant information from these manual files will inevitably add to the time taken to fulfil requests 2 to 5. Moreover, even if the FSA's estimate for searching these diaries was scaled back to an average of 1 minute per day and the number of working days each of the individuals was in the office was said to be 570 (allowing for a generous annual leave entitlement) the time taken to search all four diaries would still significantly exceed the cost limit, 1 minute per day x 570 days x 4 diaries = 2280 minutes or 38 hours.

44. The Commissioner is therefore satisfied that it would take in excess of 18 hours to fulfil requests 2 to 5.
45. In relation to the fulfilment of requests 6 to 9 the Commissioner notes that the FSA did not provide a specific estimate of the time taken to fulfil each task. Furthermore in relation to the explanation provided to the complainant the Commissioner notes that there was some ambiguity as to whether the FSA intended to conduct separate searches of the 78 files and diaries using the criteria set out in requests 6 to 9, i.e. 'internal meetings', after it had searched the 78 files and diaries using the criteria of the requests 2 to 5, i.e. external meetings and after it had conducted the searches necessary to fulfil request 1, or whether it would search all the relevant files at the same time for any information falling within the scope of all 9 requests.
46. In subsequent correspondence with the Commissioner the FSA explained that it could conduct simultaneous searches of the relevant documentation (i.e. the 78 Northern Rock files, the diaries of the four named individuals and information held elsewhere relating to Northern Rock) in order to identify and extract all information relevant to all 9 requests (i.e. information not just about external meetings but also information about internal meetings) but it considered that this would increase the time estimates it had provided to the complainant.
47. On the basis of the analysis above the Commissioner accepts that the FSA has provided an estimate for the process of fulfilling request 1 and an estimate for the process of fulfilling requests 2 to 5 both of which are sensible, realistic and supported by cogent evidence and moreover support the conclusion that the cost of fulfilling request 1 would exceed £450 and that the cost of fulfilling requests 2 to 5 would also significantly exceed £450. However, as suggested above in paragraph 45 the Commissioner is not persuaded that the FSA has provided a particularly clear estimate of the process, and indeed cost, of fulfilling requests 6 to 9.
48. However, this failing does not affect the Commissioner's conclusion in this case: For the reasons set out at paragraphs 34 and 35 the Commissioner is satisfied that the FSA can aggregate the cost of complying with the 9 requests. On this basis, and on the basis that the Commissioner has concluded that responding to request 1 would exceed the cost limit, the Commissioner has concluded that the FSA can rely on sections 12(1) and 12(4) to refuse to answer all 9 of the requests contained within the complainant's letter of 3 January 2008. The Commissioner notes that even if request 1 could be fulfilled within the cost limit given that the cost of responding to requests 2 to 5 would also exceed the cost limit, the FSA could also rely on sections 12(1) and 12(4) to refuse to answer all 9 of the requests contained within the complainant's letter of 3 January 2008 because the cost of fulfilling requests 2 to 5 exceeds £450.
49. In reaching this conclusion, and in particular in considering the nature of the searches which the FSA explained it would need to undertake in order to fulfil these requests, the Commissioner has taken into account the argument advanced by the complainant that the FSA must hold the information he

requested in an easily retrievable format given the work undertaken by the FSA's Internal Audit Division.

50. The Commissioner accepts that there was considerable overlap between the work undertaken by the Internal Audit Division whose remit was to focus on the FSA's supervisory approach to Northern Rock and the complainant's requests which sought relatively top level details (i.e. numbers and dates) of meetings between the FSA and Northern Rock. As the complainant has noted he refined the time period covered by the scope of his requests to coincide with the period falling within the scope of the Internal Audit Division's investigation. Furthermore the Commissioner notes that the report refers to a number of meetings held between the FSA and representatives of Northern Rock.
51. However, the Commissioner notes that the complainant's requests are very broad in scope – for example the first request sought details of all meetings between the FSA and Northern Rock – but at the same time are also quite specific in nature – for example requests 2 to 5 sought details of the meetings attended by particular individuals.
52. The Commissioner is therefore satisfied that although the FSA clearly reviewed and collated significant amounts of information as part of its internal Audit Division's investigation which fell within the scope of the complainant's requests, (i.e. the 78 Northern Rock files) this does not mean that this information was collated in a format which would allow the requests to be answered using a more efficient methodology than that described above. Moreover, as the complainant has sought details of all meetings between the FSA and Northern Rock and in order to fulfil this request the FSA would have to locate all information it holds about Northern Rock. The FSA has been clear, and the terms of reference of the report support this, that not all information it holds about Northern Rock was considered as part of its investigation, rather simply information about the FSA's supervisory approach to Northern Rock.

Section 16 – duty to provide advice and assistance

53. Section 16 of the Act requires a public authority to provide advice and assistance so far as it is reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information.
54. The section 45 Code of Practice provides guidance to public authorities in carrying out their duties in relation to the Act and 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. In relation to cases where the public authority has refused a request on the basis of section 12, the guidance suggests that:

‘...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.³
(Para 14)

55. The Commissioner is satisfied that in the circumstances of this case, the FSA provided the complainant with a reasonable level of advice and assistance in order to allow him to refine his requests. The Commissioner has reached this conclusion for a number of reasons: Firstly, the requests of 3 January 2008 already represented a refined set of requests to those originally submitted in October 2007. Secondly, it would not be possible for the complainant to bring these requests within the cost limit by only seeking the information covered by some of his 9 requests (e.g. requests 1 to 5) because on the basis of the above analysis to fulfil any of the individual 9 requests would be likely in itself exceed the cost limit. Thirdly, although the Commissioner accepts that a request could be written that may be answered within the cost limit, for example the complainant could ask the FSA to search the 78 files until the cost limit is reached or search the diaries of just one of the named individuals until the cost limit is reached, this would be unlikely to satisfy the complainant; the nature of the requests contained within the letters of October 2007 and 3 January 2008 imply that that the complainant was seeking a holistic view of the FSA's regulation of Northern Rock. By simply providing the complainant with the information which could be located within a limited number of files or details of one individual's interactions with Northern Rock would clearly not fulfil this desire.
56. The Commissioner finds support for this third point in a suggestion the complainant advanced in his letter of complaint submitted to the Commissioner. In this letter the complainant indicated that he would be prepared to refine requests 1 to 5 to meetings between Messers McCarthy, Tiner, Sants and Briault with 'directors or senior management of Northern Rock plc' as opposed to meetings with 'the directors or management or advisors of Northern Rock plc or its subsidiaries.'
57. The Commissioner accepts that this proposed amendment does result in slightly narrower requests. However, the Commissioner does not think that this will affect the nature of the searches that the FSA needs to undertake in order to locate the this information; for example in relation to request 1 the 78 files will still need to be searched and then further information not contained within the file considered, and in relation to requests 2 to 5 the diaries of the four individuals would still need to be searched.

The Decision

58. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, by virtue of the application of section 12(1).

³ Freedom of Information Act, Section 45 Code of Practice:
<http://www.foi.gov.uk/reference/impref/codepafunc.htm>

Steps Required

59. The Commissioner requires no steps to be taken.

Right of Appeal

60. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 8th day of July 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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 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.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

The appropriate limit

3. - (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

Estimating the cost of complying with a request - general

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

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

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

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

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

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

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

5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971^[4] in any part of the United Kingdom.