

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 October 2007

Public Authority: Chief Constable of North Yorkshire Police
Address: Police Headquarters
Newby Wiske Hall
Northallerton
North Yorkshire
DL7 9HA

Summary

The public authority initially refused the information request as vexatious. Following the intervention of the Commissioner, the public authority altered its stance and refused the information request under section 12, on the grounds that the cost of complying with the request would exceed the appropriate limit of £450. The Commissioner finds that the public authority failed to comply with the Act initially in that it inappropriately refused the request as vexatious. The Commissioner also finds that the public authority has complied with the Act in that the cost of complying with the request would exceed the cost limit, but further finds that the public authority failed to comply with the Act in that it did not cite the cost limit when initially refusing the request and that it failed to provide advice and assistance. Although the public authority has breached the Act, the nature of these breaches means that remedial action is not necessary.

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 the following information request on 31 May 2005:

"I make [an] application to the Chief Constable under the provisions of the [Freedom of Information Act 2000] for all information held by NYPolice relating to:

- 1. The instruction of North Yorkshire County Council Legal Services (NYLS) in the matter of my application for a policeman's injury award including the date NYLS were instructed and by whom;*
- 2. NYPA's decision to refer my application for a policeman's injury award to the SMP which was conveyed to me in a letter dated 13 November 2003 from Mr Miller of NYLS together with the information upon which that decision was founded and details of the person or designation of the person who made the decision for or on behalf of NYPA together with his/her authority to do so;*
- 3. The letter of recommendation relating to the application that I made for a policeman's injury award in a letter to the Chief Constable dated 18 November 2002 that was forwarded on or about 29 March 2004 by the then Force Medical Advisor, Dr G Douglas, to the Force's Director of Human Resources including the provision to me of a copy of the letter.*
- 4. All letters and communications that were exchanged between the then Force's Medical Advisor, Dr G Douglas, and the Director of Human Resources, or any other person acting on his behalf or instructed by him or the Chief Constable, in the matter of my application for a policeman's injury award whether prior to or subsequent to the date of the FMA's letter of recommendation referred to above including a copy of any such letter or communication.*
- 5. The number of certificates issued by the FMA, Dr Douglas under the provisions of Regulation H1 of the Police Pensions Regulations 1987 in each year during the 5 years prior to 1 April 2003 in relation to the statutory medical question relating to whether a disablement was likely to be permanent, together with a description of the nature of the disablements upon which Dr Douglas was asked to make such decisions.*
- 6. The date on which arrangements were put in place in NYPolice to separate the roles of FMA and SMP in relation to the better management of ill health retirements in accordance with the advice and guidance contained in Home Office Circular No. 21/2003.*
- 7. The date on which Counsel was instructed to settle (draft) the documentation relating to the referral to the SMP of my application for a policeman's injury award together with details Counsel and her Chambers.*
 - 7.1. Records of all communications exchanged between any person instructed by NYPA and/or the Chief Constable in the matter of my pension application with Counsel concerning the delay in the completion of the referral documentation.*
 - 7.2. A dated copy of any referral documentation relating to my application for a policeman's injury award that was finalised by Counsel together with the dates on which it was received from Counsel by NYPolice and by whom.*
- 8. The date on which a contract was awarded to BMI Health Services for the provision of SMP services to NYPA/NYPolice of their own account or with others,*

together with information relating to the date on which that contract came into effect.

9. The dates on which tenders were invited and a contract let to BMI Health Services for the provision of FMA services to NYPA/NYPolice, whether by NYPA/NYPolice on their own account or with others, together with information relating to the date on which the contract came into effect.

10. Any and all actions taken, and procedures introduced, by NYPolice to comply with the advice and guidance contained in Home Office Circular no. 21/2003 in Section B paragraphs 30 and 31 – What you need to do to apply the new regulations from 1 April 2003 - including the date any action was taken or procedure introduced and the date and means each was approved for use in NYPolice together with a copy of all relevant actions and procedures.

11. Any and all actions taken and arrangements made by NYPolice to comply with the advice and guidance contained in Home Office Circular no, 21/2003 in Section C paragraph 33 – Agreeing local protocols between police authorities and chief officers for the extent and level of delegation – including the date and means each arrangement and local protocol, particularly relating to the levels of delegation, was agreed between NYPA and the Chief Constable, and brought into effect by reference to the minutes of any meeting etc.

12. Any and all actions taken and arrangements made by NYPolice to comply with the advice and guidance contained in Home Office Circular no, 21/2003 in Section C paragraph 33 – procedures for officers, force managers and the FMA to adopt to manage ill-health – including the date and means each and every procedure was approved and brought into effect together with a relevant copy.

13. Any and all actions taken and arrangements made by NYPolice to comply with the advice and guidance contained in Home Office Circular no. 21/2003 in Section C paragraph 33 – arrangements for progress in each case to be monitored by a nominated member of the HR Department to help the police authority ensure that it is dealt with expeditiously at all stages – including the date of each action was taken and the date and means the arrangements were approved for use in NYPolice.

13.1. All reports or communications made or created by the designated member of the HR Department to enable the police authority to ensure that my application for a policeman's injury award was being dealt with expeditiously at all stages including information about any and all such reports that were passed to the police authority, or member of it, together with the relevant dates and designation of the member of the HR Department concerned and the means by which the information was passed to NYPA together with any communication received from NYPA in respect of each report.

14. Any and all actions taken and arrangements made by NYPolice to comply with the advice and guidance contained in Home Office Circular no. 21/2003 in section C paragraph 33 – arrangements for the force to report and the police authority monitor the force's exercise of powers under H1 and A20 that have

been delegated to it – including the date and their introduction and the date and means the delegation arrangements were approved for use in NYPolice.

14.1. All reports made or communications passed by NYPolice to a member or members of NYPA as a result of the arrangements referred to above to enable the police authority to monitor the exercise of powers under H1 that had been delegated to the Chief Constable in relation to my application for a policeman's injury award including the relevant dates of any such reports or communications, the designation of the officer or member of the HR Department concerned and the date each was passed to NYPA together with any response received from NYPA.

14.2. Any report submitted by NYPolice to the Clerk to NYPA under the emergency powers delegated to him under NYPA's revised scheme of Delegation to Officers for his consideration and the determination of any question relating to my application for a policeman's injury award, which was considered to be of sufficient importance to require an early decision, although not of sufficient importance to warrant the calling of a special meeting of the authority or where the calling of such a meeting was impracticable in all the circumstances.

15. The date and means by which the NYPA delegated exercise of its powers under Regulation H1 to the Chief Constable including the minutes of the relevant meeting of NYPA at which it is NYPA delegated the exercise of the relevant powers and a copy of any and all relevant reports upon which that decision was made.

15.1. If it is said that the exercise of such powers was by way of NYPA's revised Scheme of Delegation to Officers, details of the approved policies and strategies, so far as they might be applied to an application for a policeman's injury award, within which the Chief Constable is required to act to meet NYPA's expectations referred to in the revised Scheme of Delegation together with the minutes of the meetings at which each relevant policy or strategy was approved.

15.2. If it is said that the Chief Constable, or any person authorised to act on her behalf, acted in accordance with powers delegated under NYPA's revised Scheme of Delegation to Officers, details, including copies of any report or record of the means by which, when exercising those delegated powers in respect of my application for a policeman's injury award, the attention of NYPA was drawn to any issues which were, or had the potential to be, sensitive or contentious or, it may have been considered prudent to do so, the views of, or a decision from, of any report, verbal or otherwise, or consideration by the NYPA on the issue in question together with NYPA's response.

16. Any and all actions taken and arrangements made by NYPolice to comply with the advice and guidance contained in the Home Office Circular no. 21/2003 in Section C paragraph 33 – arrangements for progress in each case to be monitored by a nominated member of the HR Department to help the police authority ensure that it is dealt with expeditiously at all stages – that were put in place in NYPolice to help the police authority ensure that applications such as mine were, and continue to be dealt with expeditiously at all stages together

including:

16.1. The identity or designation of the nominated member of the HR Department in respect of my application for a policeman's injury award; and

16.2. All reports and communications made by NYPolice to NYPA in respect of my application for a policeman's injury award as a consequence of any such arrangements.

17. Any and all actions taken and practices and procedures put in place in NYPolice to take account of the advice and guidance contained in Home Office Circular no. 21/2003 in Section D paragraphs 46 & 46 – Cases where an injury award is considered in conjunction with permanent disablement – injury claims arising after retirement – including the date of their introduction and the date and means the arrangements were approved for use in NYPolice; and

17.1. The date on which any decision was made to apply any such procedures to my application or not as the case may be together with the reasons for any relevant decision, when it was made and by whom.”

3. The public authority responded to this on 3 June 2005. The public authority refused the information request under section 14 of the Act as it was considered vexatious. The public authority cited the following grounds for this refusal:

- The request was for information which is clearly exempt, and
- The request can be fairly characterised as obsessive or manifestly unreasonable.

4. The complainant contacted the public authority on 12 June 2005. In this letter, the complainant requested the public authority carry out a review of its decision to refuse the information request.

5. The public authority replied giving the conclusions of its internal review on 22 August 2005. The review concluded that the request had been accurately characterised as vexatious and upheld the decision to refuse the request.

The Investigation

Scope of the case

6. The complainant initially contacted the Commissioner on 8 August 2005. The complainant contacted the Commissioner further on 25 August 2005 following the completion of the internal review. The complainant clarified that he wished the Commissioner to consider the refusal of his information request as vexatious.

Chronology

7. The Commissioner contacted the public authority on 3 April 2006. In this letter,

- the public authority was asked to clarify its reasons for refusing the complainant's request as vexatious.
8. The public authority responded on 22 May 2006. In this response, the public authority referred to its letter of 3 June 2005 to the complainant as giving its reasons for refusing the request as vexatious. These reasons are listed above at paragraph 3.
 9. The Commissioner contacted the public authority further on 31 May 2006. In this letter, the Commissioner stressed to the public authority that it was unlikely that its refusal of the request as vexatious would be upheld by the Commissioner on the basis of the arguments that it had given up until that time.
 10. The Commissioner noted that it appeared that the public authority had refused the request primarily on the basis of its length and stressed that section 12 of the Act was the relevant provision where a public authority had concerns about the period of time it would take to comply with a request. In response to the public authority's view that the request was vexatious as it was for information clearly exempt, the public authority was advised that it would have been more appropriate to refuse the request on the grounds of the exemption believed to apply. It was not immediately clear to the Commissioner, upon reviewing the request, that all of the information could be deemed 'clearly exempt' particularly as a significant proportion of the material requested related to practices and procedures adopted by the public authority to ensure compliance with guidance issued by the Home Office in relation to handling personnel issues.
 11. The Commissioner also stressed that a high threshold is set when considering whether a request can be fairly characterised as vexatious. The public authority was referred to a previous Decision Notice (case reference FS50078594) as an example of the circumstances in which the Commissioner will accept that a request is vexatious.
 12. The Commissioner went on to recommend that, in light of the unlikelihood of it being accepted that the request was vexatious, the public authority should reconsider its stance. The public authority was advised that if the request was refused under any exception or exemption, the complainant should be advised of this and of why the relevant provision was believed to apply.
 13. The public authority responded on 11 July 2006. In this response the public authority stated that it had reconsidered its stance and now wished to refuse the complainant's information request on the grounds of cost under section 12, rather than as vexatious under section 14.
 14. The public authority went on to state that the total cost of responding to the information request was estimated at £131,375. This was based on an estimate of 5,255 hours of staff time.
 15. The Commissioner responded to the public authority by telephone on 13 July 2006. The public authority was advised that citing section 12 was appropriate if its cost estimate was accurate. The public authority was also advised that, in accordance with section 16, the public authority should advise the complainant of

how his information request could be amended so that it would be possible to comply with this without exceeding the cost limit.

16. The public authority responded on 14 July 2006, providing a copy of its letter of the same date to the complainant. This letter informed the complainant that the initial refusal of his request as vexatious had been reconsidered, but that to comply with his request would exceed the cost limit. The complainant was advised that if he wished to refine his request in order that it could be complied with within the cost limit, it would be possible to comply with parts 1, 3, 6, 7, 7.2 and 16.1 without exceeding the cost limit.
17. The Commissioner contacted the complainant on 20 July 2006. In this letter, the complainant was advised firstly that the Commissioner believed that the public authority should have provided some information as to how the cost estimate was formed. Although the public authority had not done this in this case, rather than extend this case further, the complainant was provided with the information that had been provided to the Commissioner about how the cost estimate had been formed. This information showed how the cost estimate had been formed in relation to part 5 of the information request. This estimate showed the cost of complying with this part of the request would, in itself, far exceed the appropriate limit.
18. Secondly, the Commissioner noted that the complainant had been advised as to how to refine his information request. In an attempt to informally resolve this case, the complainant was advised that by submitting a refined information request, he should be able to access some of the information requested, rather than none at all.
19. The complainant copied to the Commissioner an information request to the public authority dated 24 July 2006 that was slightly amended from the request of 31 May 2005. The Commissioner responded on 26 July 2006 stating that the complainant should contact the Commissioner again if he was dissatisfied with the handling of his refined request.
20. The public authority contacted the Commissioner on 11 August 2006 copying a letter of the same date to the complainant. This letter to the complainant advised that, as his request of 24 July 2006 was only slightly amended from his request of 31 May 2005, this would still greatly exceed the cost limit. The complainant was again advised that parts 1, 3, 6, 7, 7.2 and 16.1 of his request of 31 May 2005 could be complied with without exceeding the cost limit.
21. The complainant copied to the Commissioner a letter dated 20 August 2006 to the public authority. In this letter, the complainant refined his request as recommended by the public authority.
22. The public authority responded initially to the complainant on 12 September 2006. With this response, the information requested at part 6 of the request was disclosed. Following a further exchange of correspondence, the public authority responded to the complainant on 22 January 2007. In this correspondence, the public authority responded to the complainant's refined information request,

treating the majority of these questions as subject access requests made under section 7 of the Data Protection Act 1998. The majority of the information requested by the complainant in his refined request was disclosed under the Data Protection Act.

23. The complainant contacted the Commissioner on 5 February 2007. In this letter, the complainant confirmed that he wished to continue his complaint on the grounds that he did not accept that the cost estimate made by the public authority in response to his request of 31 May 2005 was accurate.
24. The Commissioner contacted the public authority further in connection with this on 8 March 2007. In this letter, the public authority was informed that the complainant had confirmed that he wished to proceed with this complaint on the basis of the refusal of his request on the grounds of cost. In response to this letter, the public authority was asked to provide details as to how the cost estimate had been formed in relation to each aspect of the complainant's information request.
25. The public authority responded to this on 18 April 2007. With this response, the public authority provided details as to how its cost estimate had been formed in relation to each aspect of the information request. The estimated time spent on and the cost incurred through each aspect of the request is as follows:
 1. 18 hours, £600
 2. 18 hours, £600
 3. 2 hours, £50
 4. 5 hours, £125
 5. 5,000 hours, £125,000
 6. 4 hours, £100
 7. 2 hours, £50
 - 7.1. 24 hours, £600
 - 7.2. 3 hours, £75
 8. 4 hours, £100
 9. 4 hours, £100
 10. 20 hours, £500
 11. 32 hours, £800
 12. 32 hours, £800
 13. 32 hours, £800
 - 13.1. 3 hours, £75
 14. 32 hours, £800
 - 14.1. 10 hours, £250
 - 14.2. 2 hours, £50
 15. 2 hours, £50
 - 15.1. Not possible to provide an estimate of the cost of compliance with this request.
 - 15.2. As 15.1
 16. 32 hours, £800
 - 16.1. 1 hour, £25
 - 16.2. 10 hours, £250
 17. 32 hours, £800

17.1. 5 hours, £125

26. This response also included a description of the steps it would be necessary to undertake in order to comply with this request.
27. The Commissioner contacted the public authority again on 11 May 2007. In this letter, the public authority was advised that it was apparent that many aspects of the complainant's requests were for personal data. The public authority was advised specifically that the following requests appeared to be for the complainant's own personal data:

1, 2, 3, 4, 7, 7.1, 7.2, 13.1, 14.1, 14.2, 15.2, 16.1, 16.2, 17.1.
28. During the course of the investigation the public authority disclosed to the complainant information regarding points 1, 3, 7 and 16.1 of the request under the Data Protection Act. The public authority was asked to treat the remaining aspects of the request that appeared to be for personal data as subject access requests and to respond to the complainant accordingly.
29. It was noted that several of the requests, specifically 11, 12, 13, 14 and 16 appeared to have been refused on cost grounds as these requests were wide in scope. The public authority was asked to contact the complainant and suggest how these requests could be refined in order to bring them within the cost limit.
30. The Commissioner also referred to the cost estimate relating to part 5 of the request. The Commissioner noted that the cost estimate here, £125,000, was very high and asked the public authority to consider whether information relating to this part of the request may be held in a more easily accessible form.
31. The public authority contacted the Commissioner by telephone on 23 May 2007. Firstly, the public authority stated that it did not believe that it would be possible to significantly reduce the cost estimate for compliance with part 5 of the request. Secondly, the public authority had concerns about advising the complainant how to refine his wide ranging requests as it did not believe that the complainant would engage with this process. The public authority was advised that it should offer appropriate advice to the complainant. How the complainant chose to respond to this advice would be for him to decide.
32. Following a further exchange of correspondence, the public authority contacted the complainant by letter dated 13 June 2007. In this letter, the complainant was advised that those parts of his request that appeared to be for personal data would be dealt with as subject access requests.
33. The complainant was also advised that requests 11, 12, 13, 14 and 16 were wide ranging and thus would take a lengthy period of time to comply with. The complainant was advised that it may be possible to comply in part with these requests if he were to significantly narrow the scope of these requests. The complainant was provided with advice as to how he may wish to reduce the scope of these requests in order to bring them within the costs limit.
34. The public authority contacted the Commissioner further on 13 July 2007. In this

letter, the public authority confirmed that it had responded to parts 2, 4, 7.1, 13.1, 14.1, 14.2, 15.2, 16.2 and 17.1 of the request as subject access requests. The public authority provided to the Commissioner a copy of its letter of 27 June 2007 to the complainant in which it responded to the complainant's outstanding requests for his own personal data.

35. On 26 June 2007, the complainant responded to the public authority's letter of 13 June 2007. In this letter, the complainant repeated his belief that it would not exceed the costs limit to comply with his information request. The complainant reiterated those parts of his information request identified as wide in scope, 11, 12, 13, 14 and 16 and included his purpose in making these requests. The complainant did not, however, attempt to amend or refine these requests in order that it would be possible to comply with these within the cost limit.
36. The Commissioner contacted the public authority again on 30 July 2007 to ask for further information about the very large cost estimate for responding to part 5 of the request. The public authority was asked to consider whether some information falling within the scope of the request may be held in a more easily accessible form than that described when the public authority made its initial cost estimate. Specifically, the public authority was asked to consider whether statistical information was gathered that fell within the scope of the request.
37. The public authority responded to this on 9 August 2007. The public authority advised that statistical information falling directly within the scope of the request is not collected, but stated that it could provide the numbers of officers who had retired on ill health grounds during the period specified in the complainant's request. The Commissioner, whilst recognising that this information was not identical to that which had been requested, advised the public authority that he considered it appropriate for this statistical information to be disclosed to the complainant. The public authority confirmed that this information would be disclosed to the complainant.
38. The public authority also provided a further explanation as to how the cost limit would be exceeded through compliance with part 5 of the request. The public authority described the volume of manual files that it would be necessary to search to ascertain what information fell within the scope of the request, stating that it would be necessary to search the files of all police officers who served with the public authority between the years 1998 to 2003. It also reiterated that it believed its estimate of £125,000 to be a conservative estimate of the cost of complying with this part of the request.

Findings of fact

39. The public authority has withdrawn its stance that the information request was vexatious.
40. Parts 1, 2, 3, 4, 7, 7.1, 7.2, 13.1, 14.1, 14.2, 15.2, 16.1, 16.2 and 17.1 are requests for personal data relating to the complainant and have now been dealt with by the public authority under the Data Protection Act.

41. The complainant has been provided with the information requested at part 6 of his information request.

Analysis

Section 12(1)

42. When considering the cost of complying with this request, the Commissioner has excluded parts 1, 2, 3, 4, 7, 7.1, 7.2, 13.1, 14.1, 14.2, 15.2, 16.1, 16.2 and 17.1 as these were dealt with separately as subject access requests. Part 6 of the request has been excluded from this analysis as the information requested here has been disclosed.
43. The public authority's estimate of the time and cost of dealing with the outstanding elements of the request, excluding point 5, is as follows:
 8. 4 hours, £800
 9. 4 hours, £100
 10. 20 hours, £500
 11. 32 hours, £800
 12. 32 hours, £800
 13. 32 hours, £800
 14. 32 hours, £800
 15. 2 hours, £50
 16. 32 hours, £800
 17. 32 hours, £800
44. The cost estimate of the public authority for dealing with the remaining parts of the information request is £6250. The cost limit for non central government public authorities is £450. This limit is established in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The estimated cost of complying with this request is far in excess of that limit.
45. In coming to this decision, the Commissioner has noted the lengthy nature of the complainant's request. It is apparent from this that complying in full with the information request would take a considerable period of time.
46. The Commissioner has also noted that the public authority has recommended to the complainant how it is possible to refine his request in order that it would be possible to comply with it without exceeding the cost limit. Information was disclosed to the complainant in response to his earlier refined request, as referred to above at paragraph 22. More recently, the complainant did not refine his requests in response to recommendations from the public authority as to the form of such refinements.
47. The public authority has provided to the Commissioner details as to how its cost estimate was formed. This estimate indicates that the time taken in complying with this request would greatly exceed the time limit of 18 hours effectively

provided by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. As indicated by the Information Tribunal in case EA/2006/003 – 2007/0007 (Mr G James vs the Information Commissioner and others), the Commissioner has considered whether this is a bona fide estimate undertaken in good faith.

48. Paragraph 4(3) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 sets out the activities that may be taken into account when formulating a cost estimate. These activities are as follows:

- determining whether the information is held
- locating the information
- retrieving the information, or documents in which it is contained
- extracting the information from documents in which it is contained.

The public authority based its estimate on the cost of locating and retrieving the information held by it that fell within the scope of the request and the cost of extracting this information from documents, activities which can legitimately be taken into account when formulating a cost estimate.

49. The estimated cost of complying with part 5 of the request is £125,000. Whilst the Commissioner has investigated the validity of this element of the cost estimate with the public authority, he has not formed a definitive view as to whether this estimate is accurate. The Commissioner does, however, accept that compliance with this request would take a significant period of time and would be likely, in itself, to exceed the cost limit.

50. In coming to this conclusion about part 5 of the request, the Commissioner has noted the representations of the public authority about the actions that it would be necessary for it to undertake in order to comply with this request. The Commissioner also notes from the wording of this part of the request that it appears wide ranging and that the public authority has disclosed some statistical information likely to fall within the scope of the request.

51. The Commissioner accepts the accuracy of the estimate made by the public authority about the cost of complying with the complainant's information request, excluding the estimated cost of complying with part 5 of this request. This estimate shows that the cost of complying with the request would exceed the limit of £450 for non central government public authorities. As the cost of complying with this request would exceed the appropriate limit, the public authority is not obliged to comply with this request.

Section 14(1)

52. The public authority has withdrawn its stance that the information request was vexatious after advice from the Commissioner that it was unlikely that the request would be considered vexatious. In withdrawing its stance that the request was vexatious, the public authority has acknowledged that it was in breach of the Act in refusing the request under this provision.

Section 16(1)

53. Whilst the public authority did offer appropriate advice and assistance to the complainant (in refining his request), this was only following the intervention of the Commissioner. In failing to provide advice and assistance at the time the request was made, the public authority did not comply with the duty imposed by section 16(1).

Section 17(5)

54. The public authority cited section 12 only after the intervention of the Commissioner. In failing to cite section 12 when it initially refused the request, the public authority did not comply with the requirement of section 17(5) that, where an information request is refused under section 12, the public authority must provide to the applicant a notice stating that fact.

The Decision

55. The Commissioner's decision is that the public authority was not obliged to comply with section 1(1)(b) by virtue of section 12(1). He is satisfied that the cost of complying with this request would exceed the appropriate limit of £450.
56. However, the Commissioner also finds that the public authority failed to comply with the Act in that it initially incorrectly refused the request as vexatious under section 14(1).
57. The Commissioner further finds that the public authority failed to comply with section 17(5) in that it did not cite section 12 when it initially refused the request and that it failed to comply with section 16(1) by failing to provide advice and assistance.

Steps Required

58. The public authority is not required to take any steps. Whilst the Commissioner finds that the public authority failed to comply with the procedural requirements of the Act, these breaches do not necessitate remedial action.

Other matters

59. Section 7 of the Data Protection Act gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access. As explained above, the public authority has now considered those elements of the request which constitute the complainant's personal data in accordance with the DPA. The Commissioner will now go on to make an

assessment under section 42 of the DPA as to whether the information in question in this case should be disclosed to the complainant. However, this assessment will be dealt with separately and will not form part of this Decision Notice, because an assessment under section 42 of the DPA is a separate legal process from the consideration of a complaint under section 50 of the FOI Act.

60. The Commissioner notes that some of the request should have been dealt with as a subject access request, under section 7 of the DPA from the outset, and he would encourage public authorities to consider requests under the correct access regime at first instance.

Right of Appeal

61. 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

62. 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 10th day of October 2007

Signed

Steve Wood
Assistant Commissioner

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

Legal Annex

Section 12

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 14

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 16

Section 16(1) states that –

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”

Section 17

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.”