

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 29 March 2007

**Public Authority:** Colchester Borough Council  
**Address:** PO Box 884  
Town Hall  
Colchester  
Essex  
CO1 1FR

### Summary

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The complainant has been corresponding with the public authority since March 2004 regarding a newspaper article published previously, which reported that the Chief Executive had saved the public authority £3 million. As the Act came into force, the complainant made an information request to the public authority and requested a detailed breakdown of the savings. As this correspondence continued, the public authority provided a substantial amount of budgetary information. The complainant remained dissatisfied because he required the information about the reported savings in a similar format to a budget report he received from the public authority in March 2004. The public authority explained the difficulties in analysing the data and producing it in the manner the complainant described and stated that to do so would exceed the cost limit. The Commissioner's investigation established that the information requested by the complainant was not held by the public authority. The Commissioner decided that, although considerable advice and assistance was provided, the public authority did not inform or make it clear to the complainant that it did not hold the information in the manner specified in the complainant's request and therefore breached section 1 of the Act.

### The Commissioner's Role

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1. The Commissioner's role 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

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2. The complainant has been in dispute with the public authority since March 2004 over an article written and published by the Essex County Standard on 29 January 2004 concerning a reported £3 million saving made by the Chief Executive. As the Act was coming into force in January 2005, the complainant contacted the public authority on 10 December 2004 to make the following request in accordance with his rights under section 1 of the Act (the full text of this section of the Act is available in the Legal Annex to the end of this Notice):

“I want the council to prove that every penny of the £3 million was saved and provide an item by item proof to correspond with the budget forecast I have in my possession....”

This request was accepted as valid and the reasons for this are set out at paragraph 8.

3. The public authority responded on 6 January 2005 and advised the complainant that his request for information had been considered in accordance with the Act. It referred to previous correspondence with the complainant on the same matter and stated that a considerable amount of information had already been provided to him. The public authority informed him that he would need to meet the costs it would incur to provide the information in the detailed manner he required.
4. The complainant continued to correspond with the public authority regarding this matter. He felt the public authority's charge for the information required was “unfounded nonsense” and stated that he had evidence to suggest that the information existed in the format he required. On 5 February 2006 he contacted the Information Commissioner's Officer to request that it investigate this matter.
5. On receipt of the complaint the Commissioner noticed that the public authority had not carried out an internal review of its refusal to provide the information in the manner described by the complainant. The Commissioner therefore wrote to the complainant on 26 April 2006 to advise him that he would need to request the public authority carry out an internal review prior to any formal consideration being given to his case.
6. On 9 May 2006 the complainant forwarded a copy of a letter he received from the public authority dated 4 May 2006. The public authority advised the complainant that as it had provided a considerable amount of information previously to demonstrate the savings had been made, it had nothing further to add.
7. The Commissioner was satisfied that the public authority had conducted an internal review of the decision it reached on 6 January 2005 as evidenced by the ongoing correspondence and therefore wrote to the complainant on 16 May 2006 to confirm that his case would be given further consideration.

## Validity of the request

8. The Commissioner noted that the complainant's request for information preceded the introduction of the Act. To establish whether this case was eligible for consideration under the Act, the Commissioner referred to the Information Tribunal's decision concerning the appeal of the Department of Work and Pensions vs. Information Commissioner (reference: EA/2006/0040). In paragraph 12 of its decision the Information Tribunal stated that it was happy to consider the request under section 1 of the Act, as it was clear that both parties wished for the matter to be dealt with in this way and the public authority deemed the request to be a valid request under the Act. In this particular case, the complainant asked that his request be treated as a freedom of information request and advised the public authority that he was willing to wait until the Act came into force for a response from the public authority. It is clear that the public authority accepted the request as a valid request for information under the Act and proceeded to issue a refusal notice. For these reasons the Commissioner is satisfied that the complainant's case is eligible for formal consideration under the Act.

## The Investigation

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### Scope of the case

9. As the role of the Commissioner is to decide whether a request for information has been dealt with in accordance with section 1 of the Act, the investigation sought to establish whether the public authority holds the requested information in the format or manner described by the complainant. In addition, the investigation was to determine what relevant information was held by the public authority at the time of the complainant's requests and what information had been provided.
10. The complainant raised other issues with the Commissioner concerning the validity of the newspaper article and the effectiveness of the public authority's accounting systems. Although this provided useful background and context to the complainant's information request, these issues are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology of the case

11. The Commissioner wrote to the public authority on 20 December 2006 to request further information to enable him to consider the public authority's handling of the complainant's information request. The Commissioner asked a series of preliminary questions to establish what information had already been provided to the complainant in relation to his request, what further information, if any, was available that may satisfy his request and to seek clarification on the cost the public authority estimated would be incurred to provide the information in the manner required.
12. The public authority responded on 1 February 2007 providing a copy of all correspondence it had received from the complainant since March 2004 and its

various responses concerning the alleged £3 million saving reported in a newspaper article in January 2004. It stated that considerable time was invested into providing the complainant with all the available information that it could and that exhaustive steps were taken to satisfy the complainant's request. It stated that on 6 May 2004 it forwarded to the complainant a copy of its audited accounts for the previous three years and, on 17 May 2004, forwarded copies of the following information it held:

- the "2004/05 Revenue Budget, Medium Term Financial Forecast and the Capital Programme for 2004/05 to 2006/07", report to cabinet on 28 January 2004
  - the "Pre Audit Revenue Outturn 2002/03" to the public authority's Overview and Scrutiny Panel of 8 July 2003
  - the "Pre Audit Revenue Outturn 2001/02" to the Overview and Scrutiny Panel of 27 August 2002
13. The public authority also forwarded to the complainant, on 15 March 2005, a copy of the report and minutes for the last Finance and Audit Scrutiny Panel held on 29 June 2004. This was in response to a further request it received from the complainant on 13 March 2005 to receive a copy of the minutes of the last meeting held by the public authority in respect of the alleged £3 million saving. It informed the complainant that this report highlighted that the budget for 2003/04 was delivered by the service areas and therefore the forecasted savings were made.
14. In response to the complainant's request to receive an item by item breakdown over the period in question to demonstrate where the savings were made or to receive this information in the format of the budget report, the public authority stated that to compile the information in this level of detail and in a format meaningful to the complainant, it would involve substantial officer time and analysis of data. It explained that to provide the requested information it would take approximately 30 days and at a rate of £450.00 for every 2.5 days, this would cost £5400.00, which is over the appropriate limit under the Act.
15. The public authority explained to the complainant that supplying a "dump" of expenditure by line item from its computer system would not provide the information he required. It stated that unless it provided a significant amount of extra analysis of each account code and further detailed explanations from its finance officers (the cost of which would exceed the appropriate limit) it would not be possible for the complainant to see the savings delivery or isolate each individual saving from such information. In respect of the budget report it previously provided, the public authority stated that in reality, savings are accumulated over a range of costs codes across a large number of budget centres. Over the three year period in question a number of changes would have occurred to these cost codes and budget centres including inflation increases, growth and the breaking of specific areas into other service areas. In addition, it stated that savings are often made in different ways than first intended and to provide the savings against specific categories would require further adjustments to take into account these variables.

16. The complainant remained dissatisfied with the information provided and felt that the evidence supplied by the public authority demonstrating that it did not run over budget did not show effectively that the public authority had or was on schedule to make savings of £3 million as the article reported. He referred to the budget report he received in March 2004 which was broken down into 122 headings and stated that he believed information must have been recorded each year under these headings to know whether the savings were met. He stated that he had it on record that the budget figures were constantly checked so the savings, if any, could be monitored. He also believed that meetings would have been held at the end of each financial year to confirm or deny the savings were made. The complainant therefore believed the information in the format he required must exist and he was unwilling to accept that the public authority would incur costs over the appropriate limit if it were to provide the information in the manner he required.
17. The Commissioner contacted the public authority on 26 February 2007 for further clarification and to establish what information it held relevant to the complainant's request. As the complainant specifically requested a breakdown of the savings made over the three year period item by item or in a similar manner to the budget report, the Commissioner asked the public authority whether it holds recorded information in these formats. The public authority confirmed that it does not hold the requested information in a format similar to the budget report or on an item by item basis. It reiterated that it had made all attempts to satisfy the complainant, considered all possible options and had provided copies of the recorded information it held at the time of the complainant's requests. It stated that the information provided included the public authority statement of accounts for the years 2001/02, 2002/03 and 2003/04 and these demonstrated across the individual services the savings made over this period.

### **Findings of the case**

18. The complainant believes the information provided by the council does not demonstrate that the £3 million was saved over the period in question. He considers the public authority should be able to provide the information in the manner he described without incurring the cost it estimated.
19. After seeking further clarification from the public authority, the Commissioner established that the public authority does not hold an item by item breakdown of the savings achieved over the period 2002/3 to 2004/5 or hold this information in a similar format to the budget report the complainant received in March 2004. The Commissioner is satisfied that if the public authority were to provide a "dump" of expenditure by line item from its computer system this would not answer the complainant's request for the reasons outlined in paragraph 15 of this notice. However, at the time of the complainant's requests the public authority held a statement of accounts for the years 2001/02, 2002/03 and 2003/04 and these were provided to the complainant. These provided a comparison of the budget and expenditure of each of the individual services. At the time of the complainant's requests the public authority did not hold a statement of accounts for the year 2004/05, as this had not been produced. However, the Commissioner notes that a copy of the accounts for this financial year is readily accessible via

the public authority's Publication Scheme (further details can be found on its website, [www.colchester.gov.uk](http://www.colchester.gov.uk)).

## Analysis

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### Procedural issues

20. When responding to the complainant's information request the public authority did not inform the complainant or make it clear that it did not hold the information of the description specified in the request, as section 1 of the Act requires. However, the Commissioner acknowledges that in accordance with section 16 of the Act it provided extensive advice and assistance to the complainant.
21. The public authority considered and calculated the work that would be required to create the information in the format that the complainant described. However, this is not a requirement of the Act. The Act provides a general right of access to recorded information that is held by a public authority but this right does not extend to the right for new information to be created from existing data in order for a specific request to be satisfied. Because the public authority took this latter approach, it then referred to section 12 of the Act informing the complainant that the cost to provide this information exceeded the appropriate limit under the Act and that it required the complainant to meet this cost prior to any work being carried out.
22. As the costs calculated by the public authority were for the creation of new information in a format required by the complainant, the Commissioner cannot consider the application of section 12 of the Act in this case. As stated in paragraph 21, creation of new information is not within the scope of the Act. Section 12 of the Act provides an exemption to disclosure of information that is held if to communicate this information to the person making the request would exceed the appropriate limit. For public authorities the appropriate limit is currently £450.00. The Commissioner has established that the information requested is not held and therefore section 12 cannot apply.

### The Decision

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23. The Commissioner is satisfied that the public authority does not hold information concerning the alleged £3 million saving over the three year period in the format requested by the complainant. He is also satisfied that the public authority, in providing advice and assistance to the complainant, disclosed other relevant recorded information it held at the time of his requests. However, in terms of how this particular request was handled, the Commissioner has concluded that the public authority did not deal with the complainant's request for information in accordance with the section 1 of the Act. The public authority did not inform or at least make it clear to the complainant that it did not hold the information in the

manner in which he requested and therefore it did not comply with this section of the Act.

## Steps Required

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24. The Commissioner requires no steps to be taken.

## Other matters

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25. Although this does not form part of the Decision Notice, the Commissioner wishes to draw the public authority's attention to the application of section 12 of the Act to freedom of information requests and the current guidance on the calculation of the appropriate limit. The Commissioner noted that the public authority calculated the fee in this case to be £5400.00. According to the public authority's email to the complainant dated 18 April 2005 it calculated the cost at a rate of £450.00 for every 2.5 days. This is incorrect. The current guidance issued by the Department of Constitutional Affairs (DCA) states that the appropriate limit for the purposes of section 12 of the Act is set at £450.00 for public authorities. It highlights what may be taken into account when estimating whether the appropriate limit has been exceeded and states that when the time of staff is being considered, the hourly rate is set at £25 per hour. A copy of this guidance can be found on the DCA's website ([www.dca.gov.uk](http://www.dca.gov.uk)).

## Right of Appeal

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26. 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@dca.gsi.gov.uk](mailto:informationtribunal@dca.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 29<sup>th</sup> day of March 2007**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

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



## **Legal Annex**

### **Freedom of Information Act (2000)**

#### **Section 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 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.”