

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 9 September 2010**

**Public Authority:** The Chief Officer  
Greater Manchester Police  
**Address:** Police Headquarters  
Chester House  
Boyer Street  
Old Trafford  
Manchester  
M16 0RE

### Summary

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The complainant made five enquiries about the public authority's decision to limit the number of routes of complaint for certain individuals. The public authority responded that it did not hold any relevant recorded information. It maintained its position in its internal review. For four of the enquiries, the Commissioner is content that on the balance of probability no recorded information was held at the date of the request. For the fifth enquiry, relevant recorded information was held at the time of the request. The majority was disclosed during the Commissioner's investigation, and he has determined that the public authority was justified in applying section 12(1) (the costs limit) to the remainder. He therefore requires no remedial steps in this case, but has found that the public authority breached some procedural requirements of the Act.

### The Commissioner's Role

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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.

## Background

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2. The complainant had his rights to complain about the public authority limited to a single channel. He has indicated that he made these requests in order to understand on what basis this has happened and whether other individuals have experienced the same thing.

## The Request

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3. On 25 July 2009 the complainant requested the following information in accordance with section 1(1) of the Act (the numbers have been added by the Commissioner for clarity in this Notice):

*'I have been informed by letter from [Individual A redacted] of the GMP Complaints and Disciplinary Department that I am no longer allowed to make any complaints about GMP in any way either at a police station in person or by telephone other than by making a complaint in writing directly to the Complaints and Disciplinary Department Commander.*

*[1] Please provide any information you hold relating to the Law which you rely on to allow this kind of draconian action.*

*[2] (i) Please supply the number of other individuals who have been similarly barred from making complaints in the normal manner*

*(ii) and include the dates that this action was taken against them.*

*(iii) When providing this information please break it down to show ethnicity, age and gender.*

*[3] Please provide a copy of the force policy in relation to this.*

*[4] Please provide the name and rank of the officer who sanctioned the policy.*

*[5] Please provide the name and rank of the officer who wrote the policy.'*

4. On 24 August 2009 a response was issued by the public authority. It explained that it believed that questions [1], [3], [4] and [5] were

repeat requests to which it would provide a separate response. It explained that for request [2] the information was not held.

5. On 25 August 2009 the complainant requested an internal review.
6. On 26 August 2009 a second response was issued. It listed all five enquiries and stated that searches were conducted within Greater Manchester Police to locate information relevant to the request. However, it confirmed that the information requested was not held.
7. Later on the same day the complainant requested that an internal review should be conducted.
8. On 9 November 2009 the public authority communicated the result of its internal review, which was to uphold its position that it did not hold any recorded information that was relevant to the request. It explained that due to an administrative oversight the internal review was late and apologised for the delay.
9. It did, however, in line with its obligations under section 16(1), provide an explanation in respect to question one:

*'In relation to Q1 of your request, although as stated above the review finds that GMP's response (i.e. this information is not held) was accurate and appropriate, in accordance with GMP's obligations under section 16 of FOIA, I believe the following information may be of benefit to you;*

*The review has interpreted Q1 as "please provide information relating to the law which GMP relies on to place restrictions on the means by which certain individuals can make complaints to the police".*

*Based on this interpretation my considered response would be as follows:*

*"Greater Manchester Police does not hold the requested information. However, the following information may be of benefit to you;*

*The Police Reform Act 2002 and the related statutory guidance to that Act cater for the means through which an individual can make a complaint to a police force. This Act requires police forces to provide a range of options through which an individual can gain access to the forces complaints procedures.*

*Any decisions taken by GMP to restrict the means by which a certain individual can make a complaint are not reliant on any piece of legislation but are taken on a case-by-case basis where all individual circumstances are considered and an appropriate judgment made".'*

## The Investigation

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### Scope of the case

10. On 25 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that the public authority had promised to issue him with an internal review by 24 September 2009 and had failed to do so. He explained that there was clearly recorded information held on the police computer in respect to request [2] as he had tried to make a complaint at a local station and was told he could not after the member of staff had looked at the computer.
11. On 23 October 2009 the Commissioner wrote to the public authority to remind it that an internal review was outstanding.
12. On 9 November 2009 the complainant telephoned the Commissioner. He explained that he had now received the internal review in this case and was unhappy with it. He said that he believed that the last paragraph in the internal review quoted above provided evidence that the public authority did have a policy and it was this policy amongst other things that he sought.
13. On 23 December 2009 the Commissioner wrote to the complainant and set the scope of this investigation as follows.
  1. *Whether on the balance of probabilities any information is held by the public authority, and if so, whether it should be disclosed to the public under the Freedom of Information Act.*
  2. *To consider the delays mentioned by the complainant and whether they amount to a breach of section 10(1) of the Act.*
14. On 18 January 2010 the complainant replied with a letter whose content he has concluded showed agreement with this scope.
15. During the course of the Commissioner's investigation all of the relevant information for enquiries [2](i) and [2](iii) was disclosed to

the complainant on 11 February 2010. These matters were therefore resolved informally and are not addressed in this Notice.

16. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the Commissioner does not have jurisdiction to decide whether the restrictions on the complainant's rights to complain to the public authority are lawful or reasonable in this case. He is only able to consider whether recorded information is held and, if so, whether it can be provided to the public.

## **Chronology**

17. On 2 December 2009 the Commissioner telephoned the public authority to make initial enquiries. After further contact, the complainant telephoned the Commissioner on 23 December 2009 to explain that he had real concerns about the public authority restricting his rights to complain and required the information to understand whether it had taken this position in accordance with its policy.
18. After further correspondence with the public authority and the complainant, on 27 January 2010 the public authority telephoned the Commissioner. It explained that it had been more successful in its searches and could provide the complainant with further data. It explained that it was having trouble obtaining the information for request [2](ii) owing to the costs.
19. On 1 February 2010 the public authority provided further comments to the Commissioner. It explained that it did hold relevant information for request [2] and was prepared to disclose the information for requests [2](i) and [2](iii), but was unable to provide the information for request [2](ii) as it would take more work than the 18 hours allowed by the appropriate limit. It provided the Commissioner with a draft letter to indicate what it was now prepared to disclose.
20. On 11 February 2010 the Commissioner telephoned the public authority and asked it to disclose the draft letter to the complainant. It did so on the same day. The Commissioner also wrote to the complainant, who confirmed that he wanted the Commissioner to look at section 12(1).
21. There was more communication with the public authority as the Commissioner sought further clarification, until a final response was provided by it on 23 March 2010.

## Findings of fact

22. On 11 February 2010, the public authority communicated to the complainant the following enhanced explanation of its position for requests [1], [3], [4] and [5]:

*'This question has been interpreted as "please provide information relating to the law which GMP relies on to place restrictions on the means by which certain individuals can make complaints to the police".*

*Based on this interpretation my considered response is as follows:*

*GMP does not hold the requested information.*

*However, the following information may be of benefit to you;*

*The Police Reform Act 2002 and the related statutory guidance to that Act cater for the means through which an individual can make a complaint to a police force. This Act requires police forces to provide a range of options through which an individual can gain access to the forces complaints procedures.*

*Any decisions taken by GMP to restrict the means by or channels through which an individual can make a complaint to the force are not reliant on any piece of legislation but are taken on a case-by-case basis where all individual circumstances are considered and all available options are explored, thus ensuring an appropriate judgment is made.*

*Furthermore, restrictions on means or channels of complaint do not constitute restrictions on rights of complaint. Any individual to whom restrictions have been placed upon can still fully exercise their right to complain, through the means and channels that have been deemed appropriate based on individual circumstances. Therefore, in all circumstances where such decisions are taken an individual's rights of complaint are always maintained.'*

## Analysis

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### Substantive Procedural Matters

*Is relevant recorded information held for requests [1], [3], [4] and [5]?*

23. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority is obliged to provide. This is made clear in section 1(4) of the Act. The time of the request is 25 July 2009 in this case.
24. When investigating cases involving a disagreement as to whether or not further information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
25. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in the same case. It explained that to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It also requires considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
26. The standard of proof has recently been confirmed by the Tribunal decision of *Innes v Information Commissioner* (EA/2009/0046). It stated at paragraph 41 that:

*'This Tribunal is not prepared to introduce any kind of sliding scale in terms of the standard of proof beyond the balance of probabilities. The House of Lords and other senior courts in recent decisions have confirmed the importance of maintaining the core principle - in civil proceedings – that the correct test is the balance of probabilities. It is only in relation to Asylum and childcare and child safety issues that there is any kind of variation.'*



27. The Commissioner considers that there were two classes of information required in this case.

A. The first was whether the public authority held any recorded information in relation to the law upon which it relies to place restrictions on the means by which certain individuals can make complaints to the police. This is the information embraced by request [1].

B. The second was whether the public authority had a force policy in respect of restricting certain individuals from making complaints to the police, which bears on requests [3], [4] and [5].

28. The Commissioner will consider each class in turn.

*Class A – recorded information about the law upon which the public authority relies.*

29. The public authority has explained that there is no legislation that provides any individual with the right to complain to anyone whom they choose and instead the obligation is placed on the police force to manage their internal complaints system proportionately. The Police Reform Act 2002 imposes obligations on it to have a complaints process, with a recommendation that a range of options be provided to enable complainants to access the process. However, the only legal considerations are to ensure that the restrictions do not totally limit the means and channels through which an individual can gain access.

30. The Commissioner accepts that, on the balance of probabilities, there is no relevant recorded information held in respect of this issue. The gist of the public authority's response is that its legal obligations regarding management of a complaints process are of a nature that do not require a specific legal authority to justify placing restrictions on how specific individuals may make complaints. Accordingly, the Commissioner takes the view that the public authority's response that it does not hold information relating to such legal authority is unsurprising.

31. The Commissioner has therefore determined that the public authority has complied with section 1(1)(a) in correctly denying that it held recorded information in respect of request [1].

*Class B – force policy on restricting individuals from making complaints to it.*

32. The complainant has argued that the public authority must hold a force policy as the letter that he has received was from a senior member of



- staff and its impact was to restrict his rights in a material way. He submits that it would be sensible for the public authority to have such a policy so that its approach is both consistent and defensible.
33. He has also argued that the contents of the internal review that he had received clearly shows that there is a force policy as the internal review states the circumstances in which it applies.
  34. The Commissioner has put both of these points to the public authority when investigating whether recorded information about a force policy is held. In addition, he has ensured that his enquiries have been correctly addressed to the Professional Standards Branch which is the department that makes the decision whether or not to restrict complaints.
  35. The public authority responded that it has no force policy about restricting means and channels through which an individual can make a complaint. Instead it decides every instance on a case-by-case basis. The decision is taken by a Senior Manager within the Professional Standards Branch and all individual circumstances are considered and all available options are explored. This is done to ensure that an appropriate judgment is made.
  36. The public authority explained that its general approach was to make it as easy as possible for individuals to make complaints. However, it has become necessary to place restrictions on a small minority of complainants due to the volume of complaints that are made and its view that they are vexatious (in the ordinary definition of the word rather than relating to the exclusion in section 14 of the Act). Complaints that it views as vexatious are those which are constant and persistent, which cause staff to spend a disproportionate amount of time or where there is a significant disruption to the running of an individual branch of the force, and/or where significant stress is experienced by members of that force.
  37. This explanation was provided during the course of the Commissioner's investigation and, while being a set of criteria that could be said to amount to a policy, the public authority has claimed that it is not held in a recorded format. The public authority has explained that the officers who work in its Professional Standards Branch know the procedure, that their knowledge is shared within the department, and that the decision is taken on a bespoke basis after careful consideration by senior staff.
  38. The Commissioner asked the public authority to check that it did not hold something that objectively could be seen as a policy but was

known as something else. He has checked that the public authority did not have a manual relating to this issue or a written procedure. The public authority explained that it had thoroughly checked its records, consulted with the relevant departments and that it held no recorded information that met even this wider description.

39. For these reasons, the Commissioner is satisfied that on the balance of probabilities the public authority does not hold a copy of a force policy in this matter. It does not therefore hold recorded information that is caught by request [3].
40. As it does not have a recorded force policy it follows that it will not hold any recorded information for requests [4] and [5] either, as the requests are both contingent on there being a force policy.
41. The Commissioner has therefore determined that the public authority has complied with section 1(1)(a) in correctly denying that it held recorded information in respect of requests [3], [4] and [5].

## Exclusion

### *Section 12(1)*

42. The public authority determined that it had been incorrect to deny that it held relevant recorded information for request [2]. It then disclosed the relevant information for requests [2](i) and [2](iii). It also explained that it was now relying on section 12(1) in respect of the information that it held for request [2](ii), which was for the dates when the action was taken regarding '*other individuals who have been similarly barred from making complaints in the normal manner*'. The public authority stated that it was unable to obtain the fifteen dates (there are sixteen individuals and a date is needed for each apart from the complainant whose date of restriction is already known) without engaging the costs limit.
43. Section 12(1) provides a costs threshold for the Act. As long as the public authority can prove that its estimate of the work required to answer a request for information is reasonable and exceeds the statutory limit, then it is not required to provide any information in respect of the request.
44. The Information Tribunal in *Quinn v Information Commissioner & Home Office* [EA/2006/0010] explained this point in this way:

*'The fact that the rules drafted pursuant to s.12 have the effect of defining what is a reasonable search and the amount of time*

*and money that a public authority are expected to expend in order to fulfil their obligations under the Act, serves as a guillotine which prevents the burden on the public authority from becoming too onerous under the Act.'*

(Paragraph 50)

45. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that the cost limit for non-central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
46. The Commissioner must determine whether he believes that the estimate provided by the public authority was reasonable. The issue of what constitutes a reasonable estimate was considered in the Tribunal case *Alasdair Roberts v the Information Commissioner* [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:
- *'Only an estimate is required'* (i.e. not 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'*.
47. Furthermore, the only activities of the public authority that count towards the limit are as follows:
- (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.'*

48. The public authority has provided the Commissioner with a detailed and reasoned estimate of the costs of processing this particular request.
49. It has explained that it does not hold centrally the information about the dates when restrictions were imposed and the only way it could provide the data would be to read through each of the fifteen individuals' complaints files. It said that the complaints files were in many cases very voluminous and therefore this process would in its view exceed the costs limit.
50. The Commissioner has therefore considered, first, whether there are any reasonable alternatives to checking the whole of each individual file and, secondly, whether the estimate provided in this case was reasonable and related to the allowable processing activities.

*Were there reasonable alternatives in this case?*

51. In the *Alasdair Roberts* case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However, the Tribunal also made the following more general comments on alternative methods of extraction:

*'(a)...the complainant set the test at too high a level in requiring the public authority to consider **all** reasonable methods of extracting data;*

*(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate...'*

(Paragraph 15)

52. Those circumstances were set out at paragraph 13:

*'...it is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the alternative or had it drawn to its attention by the requestor or any other third party...'*

53. In order to ensure that it was reasonable to base its estimate on checking through each and every file the Commissioner has asked

detailed questions about how the information is held and how it can be searched.

54. The public authority has explained that there are six locations that need to be checked when looking for the dates of the restrictions.
- a. Professional Standards Branch Investigations – Administrative Unit Telephone Wipeboard.
  - b. Complainant's Individual Complaint History.
  - c. Investigating Officers / Senior Management Staff Email In-Box or Computer Hard Drives.
  - d. Complainant's Box file.
  - e. Approaching the individual Investigation Officers.
  - f. Complaints files.
55. The first location is the *'Professional Standards Branch Investigations – Administrative Unit Telephone Wipeboard'*. This is what is used as a continuous evolving indicator about whose avenues of complaint have been restricted. This contains the name of the complainant along with any aliases, the division that they contact, their reference number and it may contain the person who authorised the restriction and the restriction guidelines for the administrative staff (for example, direct telephone calls to a specific officer). It does not contain dates. It is not therefore a reasonable alternative on the facts of this case. However, it can use this information to identify the relevant files.
56. The second location is the *'Complainant's Individual Complaint History'*. This is held electronically on the Professional Standards Branch Investigations complaints system. It is a database which contains contact details and all complaints that have been received and dealt with by it. The public authority explained that on this system any restriction information would be placed on the front page of the history with an 'alert or marker'. This enables staff to know about restrictions or other information about behaviour to staff. The field tends to be around 90 characters. This may contain the restriction, the initials of the person who entered the restriction on the marker, any names of investigating officers to whom direct enquiries should be addressed, or the senior staff who made this decision. The Commissioner has received an anonymised spreadsheet of the contents of these markers. He notes that in 8 of the 15 cases it contains a date when the restriction was noted on the complaints history. Four of these dates are

the same date and indicate that an administration assistant was adding this information in a separate process (rather than updating the files around the time when a restriction was imposed) and these dates are therefore not reliable. The remaining four dates while not being definitively the date that the restriction was made can be used to narrow the search and enable the public authority to check the individual files for the correspondence around that date. The Commissioner believes that this location can narrow the search in a limited number of cases, but cannot be seen as a reasonable alternative in the circumstances of this case.

57. The third location is the *'Investigating Officers / Senior Management Staff Email In-Box or Computer Hard Drives'*. The public authority explained that the original version of the email or letter may still be held within the email or hard drive of the individuals who wrote to the complainant to explain that their complaints were restricted. In order to find out who wrote this letter it would be necessary to consider the files themselves. There may be difficulties with this technique as there is no guarantee that the information has been kept, the staff may have moved on and the letter may autoupdate concealing its date. Therefore, the Commissioner does not believe that this technique would constitute a reasonable alternative either.
58. The fourth location is the *'Complainant Box File'*. This is where correspondence may be stored from a complainant that is not recorded. The decision is made by senior management only and this location is unlikely to contain any dates, and will not contain all the dates in any event. The Commissioner does not believe that these box files constitute a reasonable alternative.
59. The fifth location is within the individual knowledge of the members of the department. The public authority explained that it may be possible to use the knowledge of the individuals who worked on the complaint to see if they recall when the restrictions were imposed and narrow the search in that way. It explained that the individual may vary due to circumstances as the Investigating Officer may change role, location or become subject to a complaint themselves (disqualifying them from acting). There are also no guarantees that the officer would be able to recall the event or that their contribution would meaningfully narrow the search. It is also the case that there are around 21 staff who may be involved and 5 senior managers. The Commissioner does not consider that the recollection of individuals is likely to be good in this case and accordingly does not believe that this method constitutes a reasonable alternative.



60. The final location is each individual complaint file. The complaints files are initially paper files, but once the investigation is completed the manual file is scanned electronically and held upon the branch's scanner hard-drive. If any restriction is held within the files, it would be held in the form of a letter or email to the complainant. However, it is also the case that further restrictions may be imposed or restrictions may be imposed in a graduated fashion. It is very difficult to determine whether further restrictions may exist, as there is no set process or any letter or email templates used to inform those individuals. The only way to acquire the dates would be to comb through every complaint file for each complainant and it is this that the public authority believes would exceed the costs limit. The Commissioner will consider this issue below.
61. For completeness, the Commissioner has also considered whether the public authority would have had any business purpose to hold these dates independently from its files. He is satisfied that there is no such purpose and that he has considered all the alternatives in this case.

*Is the estimate submitted reasonable in this case and in excess of the costs limit?*

62. The public authority has confirmed that the only way that it can obtain the fifteen dates would be to read through each complainant's file until it got to the point where the letter of restriction was issued. It would also have to check beyond the initial restriction in case graduated restrictions have been applied or further restrictions were necessary.
63. It accepts that, should the dates be found early within the reading process, they may be found before the 18 hours have been exhausted. However, the only way to be sure that it finds the fifteen dates requested would be to methodically check each file. It is therefore required to make a reasonable estimate about how long it would take to locate the letter where it may be in any of 55 files and 6 box files.
64. The public authority explained that the first stage of locating the files would be to check the 'Maintain History' section of the Webfocus Complaints System. This function acts as a diary of the complaint and provides live feedback about the status of the complaint. This will enable the department to work out whether the file is likely to have been transferred onto the electronic system or not. If it were live then it would be likely to be a manual file, if it were 'awaiting scanning' it would be a manual file around the scanner and if it is historic and electronic then it would be on its electronic system. It explained the 'Maintain History' section was unlikely to be definitive.



65. It stated that it believed that 30 of the 55 files had been scanned at the date of the request. It explained that there was only the computer attached to the scanner that had access to the electronic information as it was on its hard drive. There were two options. The first would be to check the files page by page on the scanner computer and the second would be to print off every file again to be checked page by page. The public authority explained that the scanner was required for the running of the department and therefore the printing would be the most expedient way.
66. It stated that it believed that 19 files were awaiting scanning at the date of the request. It explained that those files are located within six to nine cabinets of wardrobe size. These cabinets are located in three different locations within the branch. They are filed according to the year that the investigation was completed in numerical order. It is also possible that the files may be within the 'Bookroom' and files are filed in accordance with the year of completion and number. It explained that locating the relevant files would require diligent searching; due to the nature of the complainants who have had restrictions placed upon them the time when the investigation was completed could not be known definitively; it also explained that there are instances where the files have not been placed in appropriate locations due to variation in officer resource and human error.
67. It explained that there were six live files. One is located in the unit's administrative office awaiting completion of the paperwork. Three are within their appeal period and are also kept in the unit's administrative office and the final two are under investigation and are with relevant investigation officers.
68. There are also the six box files that are all situated within the administration unit's office. Two are full and four are between a quarter and a half full.
69. The Commissioner believes that the time to locate the relevant files from the various places can be charged for under Regulation 4(3)(b). He has therefore attributed 4 hours of its costs estimate to undertake the activity of printing the scanned files and finding the relevant files that are awaiting scanning.
70. The main activity that the public authority was concerned about was the time it would take to read every file in order to obtain the 15 outstanding dates.
71. The public authority has explained to the Commissioner that there is no uniform complaints file. Some are very large and fill up to 10 large

storage boxes while others can be a few pages. It was therefore neither able to provide an estimate of the volume of an average file nor provide a definitive estimate of how long it would take.

72. It has explained that there is also no standard restriction letter. Therefore the search cannot be narrowed to a specific document. Instead all letters would need careful consideration.
73. The Commissioner has noted that the search can be narrowed where the approximate date is known from the 'Complainant's Individual Complaint History'. This is the case for 4 of the 15 individuals. This therefore meant that 12 files (and 2 box files) of the 55 could be checked in time periods without looking at every page. The Commissioner believes that half an hour would be an appropriate estimate for the work required to be undertaken for these files.
74. This left 43 files (and 4 box files) for which the search could not be narrowed. Despite the difficulties in providing an estimate around the volume of the file and a full estimate about the time that would be taken, the Commissioner asked for a random sample of files to be looked at to enable him to make an informed decision in this case. The public authority undertaking only the activities allowed in Regulation 4(3) checked three files as below:
- File 1: Contained 28 pages – time taken: **7 minutes 35 seconds**.
- File 2: Contained 141 pages – time taken: **21 minutes 9 seconds**.
- File 3: Contained 653 pages – time taken: **1 hour 35 minutes and 47 seconds**.
75. This provided an average of **41 minutes** to search a file. The Commissioner believes that in the circumstances of this case this is a reasonable average time to be taken. Applied to 44 files, this makes the estimate around **30 hours**.

76. The total reasonable estimate is therefore:
- 4 hours (locating and printing the relevant files); plus  
+ 0.5 hours (searching those files where the approximate date of the restriction is already known); plus
- 30 hours (searching those files where the approximate date of the restriction is not known);
- total estimate: 34.5 hours.**

77. The Commissioner therefore accepts an estimate of 34.5 hours is reasonable for locating the letter in the circumstances of this case. This is in excess of the threshold of 18 hours. He is therefore satisfied that the costs limits would be exceeded in this case and that the estimate is *'sensible, realistic and supported by cogent evidence'*. He is therefore content that section 12(1) has been applied correctly by the public authority.

### *Section 16(1)*

78. Section 16(1) (full copy in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
79. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code
80. In the new refusal notice issued on 11 February 2010 the public authority, after applying the costs limit, explained that the complainant had the opportunity to refine his request and could call it to discuss how this could be done (although there is no evidence that he did so).
81. Having considered the circumstances, the Commissioner has concluded that this was reasonable advice and assistance to offer in the circumstances of this case. He has therefore found that the public authority has not breached section 16(1) of the Act in this instance.

### **Procedural Requirements**

82. The Commissioner notes that there were a number of procedural breaches in this case.
83. The public authority originally denied that it held relevant recorded information for request [2]. During the Commissioner's investigation it turned out that it did hold this information. It therefore breached section 1(1)(a) in incorrectly denying that it held recorded information by the time of its internal review.

84. It also failed to comply with section 1(1)(a) within twenty working days of receiving request [2]. It therefore breached section 10(1).
85. It also failed to issue a notice stating that it was relying on section 12(1) for request [2](ii) within twenty working days. It therefore breached section 17(5).

## The Decision

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86. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act.
- *It correctly denied that it held relevant recorded information for requests [1], [3], [4] and [5].*
  - *It correctly applied section 12(1) in respect to request [2](ii).*
  - *It complied with its obligations to provide reasonable advice and assistance in accordance with section 16(1).*
87. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act.
- *The public authority wrongly denied that it held relevant recorded information for request [2] and therefore breached section 1(1)(a).*
  - *In failing to comply with sections 1(1)(a) for request [2] within twenty working days of receiving the request, it breached section 10(1).*
  - *In failing to issue a notice explaining that it was applying section 12(1) to request [2](ii) within twenty working days of receiving the request, it breached section 17(5).*

## Steps Required

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88. The Commissioner requires no steps to be taken.

## Other matters

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89. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
90. There is no timescale laid down in the Act for a public authority to complete an internal review. However, as he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. In the absence of exceptional circumstances, a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer, but the total time taken should not exceed 40 working days, and as a matter of good practice the public authority should explain to the requester why more time is needed.
91. In this case the complainant's internal review request was made on 26 August 2009 and the public authority communicated its decision on 9 November 2009. The public authority therefore took 53 working days to complete the review. The Commissioner does not believe that any exceptional circumstances existed in this case to justify that delay, and he therefore wishes to register his view that the public authority fell short of the standards of good practice in failing to complete its internal review within a reasonable timescale. He does note that the public authority did apologise to the complainant and explained that this delay was due to an administrative oversight.

## Right of Appeal

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92. Either party has the right to appeal against this Decision Notice to the First-Tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
Arnhem House  
31 Waterloo Way  
Leicester  
LE1 8DJ

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

93. 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.
94. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

**Dated the 9<sup>th</sup> day of September 2010**

**Signed .....**

**Jon Manners  
Group Manager**

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

## **The Freedom of Information Act 2000**

### **Section 1 - General right of access to information held by public authorities**

(1) 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.

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

(3) Where a public authority—

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

(b) has informed the applicant of that requirement,

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

### **Section 10 - Time for compliance with request**

Section 10 provides that:

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

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

(3) If, and to the extent that—

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

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

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



## **Section 12 – Exemption where cost for compliance exceeds the appropriate limit**

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

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

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

## **Section 16 – Duty to provide advice and assistance**

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

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

## **Section 17 - Refusal of request**

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is

exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

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

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

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

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

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

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

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

(5) 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.

(6) Subsection (5) does not apply where—

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

(7) A notice under subsection (1), (3) or (5) must—

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