

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 May 2010

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

Summary

The complainant made seven enquiries concerning specific matters within a murder investigation that was undertaken between 1992 and 1995. The public authority responded that the costs limit was exceeded and it believed that section 12(2) applied in this case. This was because the only way it could determine whether it held the information that was sought would be to check all the information it held about this murder and its volume was considerable. The complainant referred this case to the Commissioner and agreed to withdraw item seven. In relation to the remaining six items, the Commissioner has determined that the public authority has applied section 12(2) correctly in this case. He requires no remedial steps to be taken in this case.

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.

Background

2. The complainant represents a group who assist and represent a specified individual who was convicted of murder.
3. The request is for specific evidence about the handling of certain exhibits before trial.
4. The case is being considered for further review by the Criminal Cases Review Commission (CCRC).
5. From the outset, it is important to point out that the Act except in very few scenarios (none of which are applicable in this case) is applicant blind. In other words, a disclosure made under the Act is in effect to the world at large, as every other applicant would be entitled to that information upon request. This has been confirmed by the Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) which stated that, "Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions" (paragraph 52):
http://www.informationtribunal.gov.uk/Documents/decisions/guardian_news_HBrooke_v_infocomm.pdf.

The Request

6. On 18 April 2009 the complainant requested the following information in line with section 1(1) of the Act:

'Case related:

[Individual redacted 1] charged with murder Oldham Police station.

Oldham CPS dealt with the case.

Case heard Manchester Crown Court.

[Individual redacted 1] wrongly convicted of murder [date redacted].

Two appeals [year redacted] and [year redacted].

Currently with CCRC.

Dear Sir

Would you kindly supply the following:

1. *The sequence numbers of each police notebook used by [individual redacted 2] during the period March 1992 to March 1995, supplying the dates each notebook was issued and the dates notebooks were returned to the station.*

([Individual redacted 2] was serving in the Oldham and Chadderton branches of GMP during this period).

2. *The date (s) [Individual redacted 2] reported any lost/missing notebook(s).*
3. *Copies and full disclosure of all letters, memos and records of telephone conversations concerning the investigation into trace samples JH1 and JH2.*

([Firm redacted] solicitors were wrongly informed (CPS letter dated 18/4/94) "samples were not taken from the two stains to which you refer." Over seven months later the CPS apologised to [Firm redacted] (letter 6/12/94) for incorrect information regarding JH1 and JH2.)

4. *Copy of the instruction and authorisation to remove the samples JH1 and JH2 from Chorley FSS. Also copies of the records showing who collected the samples on 9/7/92 from Chorley and who received them at Oldham police station.*
5. *Copy of notes of meeting between [Individual redacted 3] and scientist at which advice given to [Individual redacted 3] regarding storage of samples JH1 and JH2 – presumably some time on or before 9/7/92
'not frozen or refrigerated, on advice of scientist, not deemed necessary to do so' (conversation 23/3/99 [Individual redacted 3] and CCRC)*
6. *Copy of [Individual redacted 3]'s 2000 critique of the CCRC Statement of Reasons (1999) with supporting notes of interviews and witness statements.*
7. *The date GMP introduced 'stepping plates' into crime scene procedures. Is there a record of their use at the scene of [Victim redacted]'s murder?'*

7. On 19 May 2009 the public authority issued its first response, it explained that in its view the cost of locating and retrieving the information exceeds the 'appropriate level' as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004. Namely that it would take over £450 of work (charged at £25 an hour). It

explained that it was therefore refusing the request under section 12(1).

8. On 26 May 2009 there was a telephone conversation between the complainant and the public authority.
9. On 26 May 2009 the public authority issued a second response. It explained that it still believed that section 12(1) applied. In this letter it provided more detail and it also issued a fees notice in accordance with section 13. This is a notice which allows the complainant to pay for the work required when the search would exceed the costs limit. It stated that the amount of fees it would charge would be £700 – calculated at 28 hours (that relate to the searching for and providing the information) charged at £25 an hour. It also explained that the payment of the fee would not guarantee the receipt of the information in this case. This was because the information is and was held as part of an investigation into the above case and therefore section 30 would mean it would be likely to be exempt from disclosure to the public.
10. On 8 July 2009 the complainant's MP wrote to the public authority on the complainant's behalf. He stated that barriers in the Public Interest Act should not apply in this case (the Commissioner believes this meant the Act) and that he would be grateful if the public authority can reconsider its decision and provide the information to the complainant. He explained that he presumed that the information was in the public domain and even if some information was exempt, the other information should be considered and provided. He explained that he wished for the public authority to provide the information at no or low cost.
11. On 24 August 2009 the public authority issued a reply to this letter. It stated that it would conduct a review of its handling of this case.
12. On 21 December 2009 it communicated the results of its review to the complainant's MP. It explained that it believed that section 12(1) applied. It stated that it had spoken to the complainant on the telephone and invited her to narrow her request. Alternatively, it had also issued a fees notice. It also confirmed that it believed that section 30 was also likely to apply in this case in any event.

The Investigation

Scope of the case

13. On 11 November 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The request was supported by the complainant's MP.
 - That she believed that the public authority exceeded the statutory timescales in this case.
 - That the information was important in respect to [Individual redacted 1]'s case.
 - That she was authorised by [Individual redacted 1] to act on her behalf.
14. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - The complainant agreed that request 7 of the original request should be withdrawn on 14 January 2009. The investigation therefore focussed on requests 1 to 6.
15. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The Commissioner notes that he is considering disclosure to the public under the Act. There are other possible private regimes where the information might be made available. These include disclosure in respect to any new court case. The Commissioner suggests independent advice is sought about this matter. There would also be the possibility of [Named Individual 1] requesting the information under the Data Protection Act 1998. Details about this regime are contained in the other matters section of this Notice.

Chronology

16. On 2 December 2009 the Commissioner contacted the public authority. He asked whether an internal review had been conducted and, if so, for the documentation to be provided to him.

17. Later that day, the Commissioner received further information from the public authority which led him to the conclusion that an internal review had not been conducted. He wrote to the public authority to ask for it to do an internal review in ten working days.
18. On 21 December 2009 the Commissioner was informed that no internal review was forthcoming. He therefore decided to investigate this case using his discretion. He wrote to the public authority to ask for it to provide its arguments about why it believed section 12 applied in this instance.
19. On 31 December 2009 the Commissioner received a response from the public authority. It explained that it was using section 12 in this case. It explained that the information may or may not be within 26 boxes, 1 leather briefcase and a file. It provided the Commissioner with a photo of those boxes. It explained that it may be best for the Commissioner to visit the public authority in the circumstances of this case to adjudicate on its application of section 12.
20. On 13 January 2010 the Commissioner wrote to the complainant. He explained the scope of his investigation and how it will progress.
21. Also on 13 January 2010 the Commissioner telephoned the public authority and confirmed that on this occasion he was prepared to visit it at its location. He asked for the public authority to clarify what day the relevant resources would be available.
22. Later the same day, the Commissioner received an email explaining that the public authority was able to accommodate him on the 18 January 2010. The Commissioner asked a number of preliminary enquiries in order to enable him to have sufficient information to make the visit productive.
23. On 14 January 2010 the Commissioner was telephoned by the complainant. She explained that she was prepared to withdraw part 7 of the request. She explained that she believed that the information for part 6 was readily available. The Commissioner explained the scope of his investigation and she agreed to that scoping. She also confirmed what was said in writing on the same day.
24. Also on 14 January 2010 the Commissioner received a response from the public authority in relation to his preliminary enquiries.
25. On 18 January 2010 the Commissioner visited the public authority. He used the opportunity to make a number of further enquiries, to time the work required to look through his selection of boxes, to look

through a random selection of boxes, to obtain the weight of the other boxes and to make notes on the contents of the boxes.

26. On 22 January 2010 the Commissioner submitted a final set of enquiries to the public authority. On 22 March 2010 the Commissioner received a response to his enquiries.

Findings of fact

27. There are 28 containers of information that may contain relevant information that is relevant to the requests. These consist of 26 large filing boxes (that measure 0.50 m by 0.35 m by 0.25 m – so each has a volume of 0.04375 m³), 1 lever arch file and 1 large leather briefcase.
28. These boxes have been returned from being archived by the public authority at Oldham District Headquarters. It took 2 hours work to obtain the boxes from there.
29. The Commissioner has also considered the weight of the boxes (where the weight was specified on the boxes). He used this information in order to ensure that he examined a random and representative sample of them and believes that the weight can also be instructive when considering the amount of information that would need to be checked:

*'Box 1 – 7.9 kg.
Box 2 – 13.2 kg.
Box 3 – 9.5 kg.
Box 4 – 8.0 kg.
Box 5 – 9.5 kg.
Box 6 – 8.6 kg.
Box 7 – 12.8 kg.
Box 8 – 6.5 kg.
Box 9 – 9.6 kg.
Box 10 – 6.3 kg.
Box 11 – 14.9 kg.
Box 12 – 5.2 kg.
Box 13 – 12.2 kg.
Box 14 – 8.8 kg.
Box 15 - 9.9 kg.
Box 16 – 4.9 kg.
Box 17 – 8.6 kg.
Box 18 – 5.8 kg
Box 19 – 12.7 kg.
Box 20 – 9.5 kg.
Box 21 – 13.8 kg.
Box 22 – 13.0 kg.*

Box 23 – 12.8 kg,

Box 24 – 9.4 kg.

Box 25 – 13.9 kg.

Box 26 – 10.1 kg.

Total weight: 257.4 kg (excluding the other two containers).'

30. The boxes are not generally indexed either by time, date or a description of contents. Within the boxes in a number of cases there are a considerable number of lever arch files. The large majority of such files are not indexed. There is also considerable information that is within the boxes and is not ordered, filed or specific to any particular topic.
31. The order of the boxes does not reflect the date that the information was generated. For example, there are a number of boxes where it is clear that information has been simply moved from the relevant police station filing cabinet into the boxes without any sort of thinking about content, filing or indexing involved.

Analysis

Substantive Procedural Matters

Section 12

32. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the total cost of complying with the request would exceed the 'appropriate limit'.
33. Section 12(2) provides that a public authority can refuse a request if the cost of complying with section 1(1)(a) alone (that is the cost of confirming or denying whether the information requested is held) would exceed the 'appropriate limit'.
34. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that this cost limit for non-central government public authorities is £450. This is 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.

35. The Information Tribunal (the 'Tribunal') in *Quinn v Information Commissioner & Home Office* [EA/2006/0010] explained this point in this way (at paragraph 50):

'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 [sic] 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.'

36. In this case the public authority's position is that it could well hold information relevant to the six remaining requests. However, it is unable to say for certain, or know the scope of how much information it holds without checking inside all of the boxes. If it does hold the information then it would be likely to be within the boxes. Its position therefore is that in order to confirm or deny what information is held would go beyond the costs limit. Its view therefore is that section 12(2) applies and no work should be required to be done.
37. The Commissioner is therefore required to consider the application of section 12(2) in this instance.
38. For clarity, there is no public interest element to consider when looking at section 12(2). It serves merely as the costs threshold and does not provide any statement about the value of any request for information.
39. The Commissioner's investigation into the application of section 12(2) has three parts. The first part considers whether the requests should be aggregated or considered individually for the purposes of section 12(2). The second part considers whether it was reasonable for the public authority to base its estimate on obtaining information from the 28 containers of information. If it was, then the third part would consider whether the section 12(2) estimate was reasonable and therefore whether the exclusion was correctly applied.

Should the requests be aggregated or considered individually for the purposes of section 12?

40. When considering whether requests can be aggregated or need to be considered individually the Commissioner is guided by Regulation 5 of the Statutory Instrument 2004 No. 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" which states that:

'5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1)

of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

(a) by one person, or

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

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

(2) This regulation applies in circumstances in which-

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

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

41. In order to aggregate the requests for the purposes of section 12(2) the Commissioner must determine whether they relate to any extent, to the same or similar information. The interpretation of this part of the Fees Regulations has been considered by the Information Tribunal in *Ian Fitzsimmons v Department for Culture, Media and Sport* [EA/2007/0124]. The Tribunal made the following general observation at paragraph 43:

"The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate to any extent to the same or similar information [Tribunal emphasis]".

42. The Commissioner has considered the six remaining parts of the request in this case. He has concluded that they are similar to an extent as they all relate to information about the investigation into [Individual redacted 1] in connection to the murder of [Victim redacted].
43. The Commissioner must then consider the time element of the test. In this case all the requests were submitted at the same time and therefore were within the period of sixty consecutive working days.
44. The Commissioner considers that the test is satisfied and the time taken to answer all six requests can be aggregated together in this instance.

Was it reasonable for the public authority to base its estimate on obtaining the information from the boxes?

45. The complainant has argued that the reliance on the costs limit was neither credible nor well considered. In addition the complainant believed that the information would not only be held in the boxes and, if so, would be readily identifiable from within the boxes not necessitating a search through all of them. She explained that she believed that the information for element six was readily accessible by both the Police and the CPS. She explained that the information for elements 1 and 2 would also be available elsewhere.
46. When considering this issue the Commissioner has received guidance from the Information Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0042]. In this case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database that contained the elements of what was requested. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However at paragraph 15, 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... "*
47. Those circumstances were set out at paragraph 13 where it was said:
- "...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..."*
48. The Commissioner has therefore considered whether there is an alternative that exists that is so obvious to consider that it renders the estimate unreasonable in this case.
49. The Commissioner firstly investigated the complainant's concerns about whether the public authority held separate and independent records of the period in question in respect to notebooks (for questions 1 and 2).

50. He was informed that in the relevant division pocket notebooks are issued by the Admin Unit to the inspector who, in turn, signs them out to individual officers. When full the notebooks are only collected back to the Admin Unit when the officer retires or resigns. Once returned those notebooks are stored in alphabetical order for six years before being shredded.
51. It explained that when an officer loses a pocket notebook he/she must submit a report to their line manager explaining the circumstances.
52. It explained that from talking to the individual concerned in this case (who had moved position) it believed that the missing notebook was mislaid by the CPS prosecutor who conducted the case.
53. It had checked with that individual about any recorded information still held. The public authority confirmed that the only information that it held about this matter was contained within the boxes. It explained that it was likely that a statement was made to the CPS in respect to it and also a statement made for the Criminal Case Review. However, this information was only held in the boxes.
54. The Commissioner also investigated the complainant's concerns about question 6. He was informed that the public authority did not know where that item was and that it was likely to be contained within the boxes. It did not have the information readily available. The Commissioner notes that he has a separate case under consideration for the same information with the Crown Prosecution Service. He will consider the application of exemptions in respect to this particular report in that case.
55. The Commissioner is also satisfied there is no electronic system that can be searched to obtain the information required. The information was created before the widespread use of electronic records and there is no indication that the information can be found anywhere else than in the boxes.
56. The Commissioner notes that it would not be possible in this case to allow the complainant to check the boxes. The boxes contain sensitive personal information of at least four different individuals and constitute evidence that the court may consider again. It is important that the police can be certain that the information maintains its integrity. It would also not be possible to copy the information within the boxes as much of it was fragile and it would still contain sensitive personal information. There is also no guarantee that the information would be within the boxes. Providing the boxes or copies of everything in them are not reasonable alternatives in this case.

57. The Commissioner is satisfied that there are no obvious alternatives to obtain **all** the information asked for in the six remaining requests besides manually checking through the boxes. The Commissioner is content that there are no obvious alternatives in this case that would render the estimate unreasonable. The Commissioner is therefore satisfied that it was reasonable in this case to rely on an estimate based on obtaining information through searching the boxes.

Was the estimate reasonable in this case and was section 12(2) therefore applied correctly?

58. The issue of what constitutes a reasonable estimate was also considered in the Tribunal case of *Alasdair Roberts v the Information Commissioner* [EA/2008/0042] 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."*

59. The activities referred to in Regulation 4(3) are:

"(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."

60. The approach outlined above (and particularly the point about not being allowed to charge for the time spent considering exemptions or redactions) was recently reaffirmed by the Information Tribunal in *Chief Constable of South Yorkshire v Information Commissioner* [EA/2009/0029]. This reaffirmation was particularly persuasive as it

constituted the only issue that the Tribunal was asked to consider in that case.

61. The public authority communicated its estimate to the complainant when deciding to issue a fees notice under section 13 of the Act. It stated that it believed that it would take 28 hours to check through all the boxes to locate relevant information that may be covered by the request. It explained to the Commissioner that this estimate was obtained by considering the volume of the 28 boxes of information and ascribing a notional hour to each box as a reasonable estimate.
62. The Commissioner was not originally convinced that the estimate was reasonable in this instance. He had received a photo of the boxes, but believed it may have been possible to narrow the search significantly by automatically excluding a number of the boxes as being not relevant to the request.
63. The Commissioner first asked the amount of work that was involved finding the boxes and retrieving them from its archive in Oldham District Headquarters. The public authority explained that it took about two hours to secure the boxes plus travelling time. The Commissioner believes that two hours can be ascribed legitimately to activity (b) and can therefore be put towards the costs estimate.
64. As explained above due to the volume, sensitivity and complexity of the information, the Commissioner was invited to visit the public authority and consider its position whilst at its premises. The Commissioner took this option and visited the public authority on the afternoon of 18 January 2010.
65. The first thing the Commissioner noted was the size of the boxes and it was clear that none of the boxes could be immediately ruled out. The boxes were consecutively numbered and labelled '[Individual Redacted 1]' box x of 26.
66. He noted that the weight of the boxes was on the boxes. He took the weights down and noted that in total they weighed 257.4 kgs. While the weight of the boxes can be slightly misleading as some of the weight will be attributable to files and the boxes themselves. The Commissioner believes that they function as a good way of ensuring that any sample he considered would be representative of all of the boxes.
67. The Commissioner looked inside the boxes. From a cursory examination it was clear there was no order to what was within them. The boxes contained no identifiable information on them which would

divulge their contents and there was no index to understand what may be within them.

68. The Commissioner notes that the requests ask for very specific information. He found it was not possible to link the information requested to the information in the boxes without inspecting all of the information in the boxes.
69. The Commissioner decided that the fairest way to examine the boxes was to take a random and representative sample of them and time how long it would take for him to consider the contents of those boxes in detail (considering them in the same depth as a member of staff of the police would need to – in order to identify whether any of the information was caught by the wording of the requests – this time concerned the time taken for activities (b), (c) and (d)).
70. The Commissioner chose the following four boxes at random:
 1. Box 10.
 2. Box 13.
 3. Box 15.
 4. Box 25.

He also considered the contents of the separate lever arch file and the contents of the briefcase.

71. From his examination of the boxes only box 15 contained contents that were uniform. Box 15 contained financial statements. The Commissioner considered the contents of this box and noted that none of this information could be relevant to the request. The time it took for the Commissioner to search through this box was 10 minutes. It was necessary to check every item in the box as there was a good chance that other information may have been filed in it as well.
72. Boxes 10, 13 and 25 took considerably more time. The content of the boxes was non-uniform and there was a good chance that some information embraced by the six remaining requests could be within them. The information within the boxes required the public authority to read every document carefully to be certain whether the information was relevant. This took the Commissioner the following amount of time:

Box 10 – 20 minutes

Box 15 - 55 minutes.

Box 25 – 1 hour 35 minutes.

73. The Commissioner also checked the separate folder that took 25 minutes and the contents of the briefcase that also took approximately 20 minutes.

74. The Commissioner can therefore calculate a costs estimate that reflects the facts as he has verified in this case:

Time to obtain the boxes + (Total number of boxes x his average time taken for one box) + (Time taken to consider other items that are not boxes).

75. The average time taken to inspect one box can be calculated in the following way:

3 hours (total time inspecting the four boxes) divided by 4 = 3/4 of an hour.

76. The Commissioner's estimate of the costs would therefore be:

2 hours + (0.75 x 26) + 45 minutes

2 hours + (19 hours 30 minutes) + 45 minutes

= **22 hours 15 minutes**

Leading to a costs estimate at £25 per hour of £556.25

77. The Commissioner 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(2) has been applied correctly by the public authority.

Procedural Requirements

Section 16(1)

78. Section 16(1) (full text 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. The Commissioner is satisfied that the request was clear and further clarification was not needed for this request. Therefore paragraphs 8 to

11 of the Code did not require additional assistance to be provided in this case.

80. 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 obtain information without attracting the costs limit in accordance with paragraph 14 of the Code. In this case the Commissioner has considered whether it would have been reasonable for the public authority to have advised the complainant to reduce the scope of her request.
81. The public authority has informed the Commissioner that it did not believe it could provide any advice or assistance in this case as it was unable to suggest how the request could be narrowed down and so fall within the costs limit. It explained that it had explained its position on the telephone and that the complainant was reluctant to narrow down the search. It explained that there was no way of locating the information for requests 1, 2, 3, 4, 5 and 6, which did not involve the searching of all the boxes.
82. The Commissioner has considered the situation and has concluded that he cannot foresee that there was any possibility of providing further reasonable advice and assistance in this case.
83. He therefore finds that section 16(1) has been complied with.

The Decision

84. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

85. The Commissioner requires no steps to be taken.

Other matters

86. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. The Commissioner is concerned about the amount of time taken to conduct

what would be a straight forward internal review in this case. He notes that his Good Practice and Enforcement team is assisting the public authority to improve its performance in this area.

87. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of Subject Access. This option may be considered by the data subject, although there are exceptions to the right of access to an individual's own personal data in these sort of circumstances.
88. After a request has been made, it is open to for the data subject to ask for the Commissioner to make an assessment of the public authority's compliance with the DPA (under section 42 of that Act). An assessment under section 42 of the DPA is a separate legal process than that under section 50 of the FOI Act.

Right of Appeal

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

First-tier Tribunal (Information Rights)
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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

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

Dated the 20th day of May 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

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

Legal Annex

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 13 - Fees for disclosure where cost of compliance exceeds appropriate limit

(1) A public authority may charge for the communication of any information whose communication—

(a) is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12(1) and (2), and

(b) is not otherwise required by law,

such fee as may be determined by the public authority in accordance with regulations made by the Secretary of State.

(2) Regulations under this section may, in particular, provide—

(a) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and

(b) that any fee is to be calculated in such manner as may be prescribed by the regulations.

(3) Subsection (1) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

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 30 – Investigations and proceedings conducted by public authorities

(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if—

(a) it was obtained or recorded by the authority for the purposes of its functions relating to—

(i) investigations falling within subsection (1)(a) or (b),

(ii) criminal proceedings which the authority has power to conduct,

(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or

(iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

(4) In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references—

(a) to any officer of the authority,

(b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and

(c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.

(5) In this section—

“criminal proceedings” includes—

(a)

proceedings before a court-martial constituted under the Army Act 1955, the [1955 c. 18.] Air[1955 c. 19.] Force Act 1955 or the [1957 c. 53.] Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,

(b)

proceedings on dealing summarily with a charge under the Army Act 1955 or the [1955 c. 18.] Air[1955 c. 19.] Force Act 1955 or on summary trial under the [1957 c. 53.] Naval Discipline Act 1957,

(c)

proceedings before a court established by section 83ZA of the [1955 c. 18.] Army Act 1955, section 83ZA of the [1955 c. 19.] Air Force Act 1955 or section 52FF of the [1957 c. 53.] Naval Discipline Act 1957 (summary appeal courts),

(d)

proceedings before the Courts-Martial Appeal Court, and

(e)

proceedings before a Standing Civilian Court;

“offence” includes any offence under the [1955 c. 18.] Army Act 1955, the [1955 c. 19.] Air Force Act 1955 or the [1957 c. 53.] Naval Discipline Act 1957.

(6) In the application of this section to Scotland—

(a) in subsection (1)(b), for the words from “a decision” to the end there is substituted “a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted”,

(b) in subsections (1)(c) and (2)(a)(ii) for “which the authority has power to conduct” there is substituted “which have been instituted in consequence of a report made by the authority to the procurator fiscal”, and

(c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.