

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 1 February 2011**

**Public Authority:** HM Revenue and Customs  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

### Summary

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The complainant made two requests to HM Revenue and Customs (HMRC) for advice and guidance relating to managerial responsibility towards the welfare of staff. With reference to the first request, HMRC stated that it did not hold any specific information, a position that the Commissioner agrees with. In relation to the second request, HMRC considered that it had complied with the request by providing internally published guidance. The Commissioner, however, has found that the interpretation of the request adopted by HMRC was too narrow. Having reconsidered a broader interpretation of the request, HMRC has confirmed that it holds additional information which is relevant to the complainant's request. However, due to the nature of the searches that would need to be undertaken to retrieve this information, HMRC estimated that the cost of compliance would exceed the appropriate limit for the purposes of section 12(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner upholds HMRC's application of section 12(1) but in not informing the complainant of this application it breached section 17(5). In failing to providing advice and assistance following its refusal under section 12(1) it also breached section 16(1). In relation to the first request the Commissioner also finds it breached section 10(1).

### 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.

## The Request

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2. On 3 December 2009 the complainant submitted the following information request to HM Revenue & Customs (HMRC):
  1. *"...let me have copies of HMRC guidance/advice in relation to managerial responsibility towards staff that are considered being at suicidal risk due to work related stress/depression."*
3. The Commissioner understands that, because of the background to the request, HMRC did not initially process the request under the provisions of the Act. Instead, correspondence was exchanged with the complainant to the effect that the request was a continuation of previous concerns and was handled in this context.
4. On 20 January 2010 the complainant informed HMRC that it had breached the time limit set out in the Act by failing to provide a response at that time. Among other points, which do not concern this Notice, the complainant went on to submit an additional information request:
  2. *"...please provide, under the Freedom of Information act, copies of all HMRC guidance/advice in relation to management and staff responsibilities to staff who are disabled in general and specifically those with Mental Health problems."*
5. On 28 January 2010 an official at HMRC addressed both request 1 and 2, although it has become apparent that this was not considered to be a formal response for the purposes of the Act.
6. With respect to request 1, the official stated that HMRC did not hold any information directly covered by the request. The official, however, did enclose some guidance on work related stress and managing sickness. Regarding request 2, the official enclosed the material that he had been able to locate that related to the management of disabled staff.
7. In correspondence of 3 February 2010, the complainant informed HMRC of his dissatisfaction with its response, particularly the extent of the information provided. The complainant stated that the requests should be passed to the relevant unit of HMRC that dealt with freedom of information requests with the view that the unit could compile a fuller response. This letter was acknowledged by HMRC on 5 February 2010, which confirmed that the requests would be dealt with under the terms of the Act.

8. On 3 March 2010 the complainant wrote to HMRC to ask it to review its handling of his requests.
9. On 8 March 2010 HMRC informed the complainant that although a response to his letter of 3 February 2010 had been compiled on 9 February 2010, due to a misunderstanding the response had not been issued until this date. In response to request 1, HMRC reiterated that it did not hold a central policy on managerial responsibility towards staff that are considered to be at suicidal risk. Relating to request 2, HMRC enclosed information that it considered satisfied the request.
10. Following on from his letter of 3 March 2010, HMRC informed the complainant on 24 May 2010 that it had carried out an internal review. HMRC agreed that the requests had not been handled under the Act in the first instance but did not believe that the complainant had been disadvantaged as a result. HMRC also accepted that it had failed to adhere to the time-frame set out in the Act for providing a response but considered that it had provided all relevant information it held that pertained to the requests.
11. The complainant wrote to HMRC again on 28 May 2010, stating that it was not clear that all information had been sent to him. To support his view, the complainant cited material retained on HMRC's Hotseat facility as an example of where information may be found that had yet to be provided. HMRC responded to the letter on 29 June 2010.

## **The Investigation**

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### **Scope of the case**

12. On 2 June 2010 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.

### **Chronology**

13. Having been informed that a complaint had been made to the Information Commissioner, HMRC wrote to the Commissioner on 19 August 2010 setting out its position. HMRC stated that its internal review had acknowledged that the information requests had not been dealt with in compliance with the Act. However, as described at paragraph 11, HMRC considered that the reference to information stored on the Hotseat facility constituted a new request and had been

- dealt with in this sense. HMRC refused the request under section 21(1) but considered that, in any event, section 12(1) of the Act would also likely apply.
14. On 23 September 2010 the Commissioner wrote to HMRC summarising the complainant's arguments and requesting clarification of various matters. As part of his submission, the Commissioner stated that information contained on Hotseat would appear be covered by the complainant's original request, particularly request 2.
  15. HMRC responded to the Commissioner on 2 November 2010. The public authority set out the searches it had undertaken to locate information relevant to the requests. With respect to request 2, HMRC stated that it had not considered that Hotseat information was covered by the scope of the request but admitted that, upon reflection, it should have sought clarification from the complainant about the specific information being sought. However, in the event that a broader reading of the request was accepted, HMRC iterated that sections 12(1) and 21(1) would apply.
  16. On 10 November 2010, the Commissioner received information from the complainant about where information might be retained by HMRC that had yet to be provided.
  17. On 11 November 2010 the Commissioner wrote to HMRC asking for a more detailed explanation in relation to its position regarding requests 1 and 2. This was provided on 1 December 2010. As part of its response, HMRC confirmed that it was not seeking to rely on section 21(1) but considered that section 12(1) applied to the second request.

## Analysis

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18. The legal provisions relevant to the determination are set out in the Legal Annex appended to the Decision Notice.

### Request 1 – the 'not-held' response

19. Section 1 of the Act requires that, upon receipt of a request, a public authority must inform an applicant whether it holds information of the description specified and, if so, to communicate that information to the applicant.
20. Where there is any disagreement about whether or not information is held by a public authority, the Commissioner has been guided by the

approach taken by the Information Tribunal in *Linda Bromley & Others and the Information Commissioner v the Environment Agency* (EA/2006/0072).

21. In its decision, the Tribunal indicated that the test to be applied was not one of certainty but rather should be the civil standard of the balance of probabilities. The Commissioner will therefore take into account the scope, quality, thoroughness and results of the searches carried out by a public authority, as well as considering any other reasons offered by the authority to explain why the information is not held.
22. In the previously referred to letter of 28 January 2010, an official at HMRC wrote to the complainant to explain that:  
  
*"I am advised by Mobile HR that the department does not have a specific policy on potential suicide cases. The Department's duty of care is discharged through managers on an individual basis with support of HR, Business and People Support, Capita etc."*
23. The Commissioner considers that, bearing in mind that an organisation's human resources (HR) unit will typically deal with issues surrounding the welfare of its staff, it was appropriate for HMRC to contact its HR team about the request.
24. However, the complainant has questioned whether the extent of its search was adequate for the purposes of the Act, suggesting that HMRC could additionally have been expected to contact the following:
  - (i) A higher official within HR. This was based on the complainant's view that such an official would potentially have more experience on the subject matter and whether any guidance or advice had been formulated in this area.
  - (ii) The department of Occupational Health Advisors – Capita.
  - (iii) The department of Business and People Support (BPS).
25. For the purposes of his analysis, the Commissioner has asked HMRC to respond to (i) – (iii).
26. Regarding (i), HMRC has confirmed that the request was passed to the relevant HR Policy team in Nottingham. HMRC is satisfied that this team would have a suitable understanding of what relevant guidance or advice that may be held, a point that the Commissioner has not seen any reason to dispute.

27. In relation to (ii), HMRC has confirmed that it referred the request to its own HR Occupational Health team. However, it had not deemed it necessary to contact Capita as the request had specifically asked for HMRC guidance or advice. As Capita are an independent company that HMRC use for Occupational Health referrals, HMRC has claimed that Capita could only hold HMRC guidance or advice if it had been provided by HMRC. The Commissioner considers the explanation to be reasonable and has not pursued this point further.
28. Turning to (iii), HMRC has informed the Commissioner that its BPS teams provide front line advice to staff on a range of HR issues. It had not, however, consulted with BPS about the request as it would expect any guidance held to be provided by the relevant HR Policy team. Nevertheless, although it was not thought necessary at the time that the request was made, HMRC decided to contact BPS during the course of the Commissioner's investigation. BPS confirmed that it did not hold any recorded information covered by the request.
29. Based on the explanations offered by HMRC, the Commissioner has concluded that, on the balance of probabilities, HMRC was correct to state that it did not hold any information at the time the request was made.

## **Request 2 – section 12**

30. When originally responding to the request, HMRC interpreted the request to be only asking for internally published policy and guidance on the topics identified by the complainant. HMRC therefore looked to provide all information it held that fell within this interpretation.
31. The complainant has since argued that the interpretation adopted by HMRC was too narrow. To support this view, the complainant has, as an example, put forward the possibility that information contained on the HMRC's Hotseat facility would be covered by the request; a source of information that HMRC had not considered as part of its response.
32. HMRC has clarified that Hotseat:

*"...is an internal HMRC facility which provides staff with the opportunity to send questions and feedback to the senior managers who run HMRC. These questions and responses from senior managers are then posted on the HMRC intranet and can be viewed by all staff. Questions can be on any subject and may focus on an individual's particular issue or could be something of wider concern across the department. About*

*2,000 questions and answers are posted on this forum each year and staff have access to questions and answers posted since 2007...*

*...the answers to Hotseat questions may make reference to departmental guidance relevant to a particular issue raised but the answers are likely then to provide links back to the departmental guidance on the dedicated intranet site. It is this guidance which was provided in the response to [the complainant]."*

33. The Commissioner considers, and HMRC has subsequently agreed, that the wording of the complainant's request asked for all guidance and advice and not just guidance which had been internally published. Accepting this reading of the request, the Commissioner takes the view that HMRC did not fully consider the 'advice' limb of the request, which would cover information on Hotseat relating to management responsibilities towards staff who are disabled.
34. HMRC has therefore reconsidered the request with a view to determining whether any other information may be held, such as on Hotseat, that may be provided to the complainant. HMRC has, however, subsequently claimed that section 12(1) would apply to the broader reading of the request.
35. The Commissioner observes that section 12(1) of the Act may be invoked where a public authority reasonably estimates that the cost of complying with a request would exceed the appropriate limit as specified by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations"). For central government departments, that limit has been set at £600, which equates to 24 hours of work based on a rate of £25 per hour per person.
36. Section 4(3) of the Regulations stipulates that:

*"In a case in which this regulations has effect, a public authority may, for the purposes of its estimate, take account only the costs it reasonably expects to incur in relation to the request in –*

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



37. During the Commissioner's investigation, HMRC estimated that it had already expended 20 hours of staff resource by providing the complainant with its internal published guidance and policies. This was based on the time two employees had taken to browse HMRC's People Policies and Guidance Intranet pages, which also provides further links to its Diversity site and Health and Safety site.
38. HMRC also went on to consider the time required to search its Hotseat facility. HMRC has stated that prior to 12 August 2010 a specific search function was not attached to Hotseat. Instead, Hotseat was covered by a general search function which would pull results from across HMRC's intranet, encompassing information that had already been located and extracted from the People Policies and Guidance pages. HMRC argues, and the Commissioner has no reason to doubt, that the search capabilities in place at the time of the request would only increase the time needed to retrieve all relevant information.
39. In any event, HMRC has explored what information could be provided using the search function implemented in August 2010 for the past two years; any information before this time not being covered by the search function. For the purposes of its test, HMRC used the search terms 'Disability', 'Stress' (as an example of a commonly encountered mental health issue), 'Mental Health' and 'Disabled staff'. HMRC has estimated that it would take a minimum of 3 minutes to open each result, skim read it to find highlighted key words and open any links to further information. The Commissioner considers that, on the face of it, the estimate appears reasonable.
40. Based on a combined total of 395 search results found, HMRC has calculated that it would take 19 hours and 45 minutes to interrogate the Hotseat system using the current search facility.
41. HMRC has also inputted general key terms for the use of the search facility in place prior to August 2010, and therefore the relevant electronic tool at the time of the request. As stated, this search function covers the whole of HMRC's intranet, including Hotseat. HMRC has indicated that the process of locating and extracting information from the search results would be the same as the process described in respect of the keyword searches within Hotseat, an assertion that the Commissioner has again seen no reason to dispute.
42. As an example, HMRC has demonstrated that searching all the content of HMRC's intranet using the term 'disabled' in a staff and employees field returned 3323 documents, a number far in excess of the results stated at paragraph 40. The Commissioner therefore considers that, drawing on the decision of the Information Tribunal in *Randall v*



*Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2007/0004), the estimate that the appropriate limit would be exceeded is sensible, realistic and supported by cogent evidence.*

43. Further, drawing on the submissions of HMRC, the Commissioner is prepared to accept that section 12(1) would be engaged on the basis of the search of the intranet alone, irrespective of the time already taken by HMRC to search for information, ie 20 hours, and disregarding the fact that the complainant has argued that the search should be further extended to include "memos, notes of meetings etc not consolidated into the main guidance/instruction."

## **Request 2 - Section 16**

44. Where a public authority refuses a request because the appropriate limit would be exceeded, the Commissioner considers that a public authority should bear in mind its duty under section 16 of the Act to advise and assist an applicant. Accordingly, where possible, the Commissioner would expect a public authority to provide information on how the estimate has been arrived at and to provide advice to the applicant as to how the request could be refined or limited to come within the cost limit.
45. The Commissioner considers that if a broader interpretation of the request had initially been adopted it would have been correct for the public authority to advise the complainant of how it had calculated the costs and to have assisted him in making a new request in order to bring the costs under the appropriate limit.
46. As HMRC only sought to rely on section 12(1) during the course of the Commissioner's investigation, it did not seek to provide advice and assistance to the complainant. The Commissioner has therefore found HMRC in breach of section 16(1) of the Act.

## **Procedural Requirements**

### **Request 1**

47. Section 10(1) requires a public authority to respond to an information request within 20 working days following the date of its receipt.
48. By failing to provide a response within the statutory limit, the Commissioner finds HMRC in breach of section 10(1).

## Request 2

49. Section 17(5) of the Act requires that where a public authority considers that section 12 or 14 applies to an information request it must issue a notice stating this fact. In accordance with section 10(1), this notice must be issued within 20 working days of receipt of the request.
50. The Commissioner has determined that HMRC failed to issue a notice in line with this requirement and therefore is in breach of section 17(5).
51. Furthermore, following its refusal under section 12(1) of the Act the Commissioner considers HMRC to have breached section 16(1) by its handling of the request. This section states that it shall be the duty of a public authority to provide advice and assistance where it would be appropriate to do so.

## The Decision

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52. 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:
  - That, with respect to request 1, HMRC was correct to state that it did not hold the requested information at the time the request was made.
  - HMRC correctly relied on section 12(1) of the Act with regards to request 2.
53. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - In relation to request 1, HMRC breached section 10(1) by its failure to respond within the statutory time limit.
  - Regarding request 2, HMRC failed to issue a refusal notice in accordance with section 17(5) of the Act.
  - By its failure to provide advice and assistance as part of its handling of request 2, HMRC breached section 16(1) of the Act.

## Steps Required

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54. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- In regards to request 2, to confer with the complainant in accordance with its responsibilities under section 16(1) of the Act to enable the complainant to submit a revised or refined request for information, to which the public authority may be able to respond within the appropriate limit set out at section 12(1) of the Act.

## Failure to comply

55. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Other matters

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56. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Owing to the context and background to the two requests submitted by the complainant, HMRC did not initially process the requests in accordance with the Act but instead dealt with them as course of business enquiries.

While HMRC has subsequently conceded that it should have identified the requests as falling under the provisions of the Act in the first instance, it informed the complainant as part of its internal review that it did not consider that he had been disadvantaged in this case by its failure to do so.

In contrast, the Commissioner would stress the importance of recognising and dealing with an information request under the Act on every occasion. By doing so, the Commissioner considers it more likely that a public authority will avoid breaches of the Act. In addition, any areas of disagreement may be more swiftly identified and potentially remedied if an applicant is aware of his rights under the Act.

The Commissioner is also concerned by the time taken for HMRC to complete an internal review. The request for a review to be carried out was put to HMRC on 3 March 2010. However, the findings of the internal review were only provided to the complainant on 24 May 2010.

The Act itself does not stipulate a time limit for completion of an internal review, although the section 45 Code of Practice associated with the Act states that they should be dealt with in a reasonable time-frame. The Information Commissioner's view is that a reasonable time for completing an internal review is 20 working days from the date of the request for review, or in exceptional cases, 40 working days. It is evident in this case that HMRC failed to subscribe to the recommended time-frame.

## Right of Appeal

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57. 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)

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 1<sup>st</sup> day of February 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution**

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

## **Legal Annex**

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

#### **S.1 General right of access**

Section 1(1) provides that -

Any person making a request for information to a public authority is entitled—

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

Section 1(2) provides that -

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

Section 1(3) provides that –

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.

#### **S.10 Time for Compliance**

Section 10(1) provides that –

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.

Section 10(2) provides that –

Where the authority has given a fees notice to the applicant and the fee paid is 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.

Section 10(3) provides that –

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.

## **S.12 Exemption where cost of compliance exceeds appropriate limit**

Section 12(1) provides that –

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

Section 12(2) provides that –

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

Section 12(3) provides that –

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

Section 12(4) provides that –

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

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

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



Section 12(5) provides that -

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

### **S.16 Duty to provide Advice and Assistance**

Section 16(1) provides that -

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

Section 16(2) provides that -

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.

### **S.17 Refusal of Request**

Section 17(1) provides that -

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.

Section 17(2) provides that –

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.

Section 17(3) provides that -

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.

Section 17(4) provides that -

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.

Section 17(5) provides that –

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

Section 17(6) provides that –

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.

Section 17(7) provides that –

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.

## **S21. Information Accessible by other Means**

Section 21(1) provides that -

Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

Section 21(2) provides that -

For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

Section 21(3) provides that –

For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

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

### **The appropriate limit**

3. - (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.  
  
(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.  
  
(3) In the case of any other public authority, the appropriate limit is £450.

### **Estimating the cost of complying with a request – general**

4. - (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.  
  
(2) A relevant request is any request to the extent that it is a request-
  - (a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or
  - (b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.  
(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,

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

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

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

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

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

(a) by one person, or

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

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

(2) This regulation applies in circumstances in which-

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

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

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