

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 November 2011

**Public Authority:** City of Westminster  
**Address:** P.O. Box 240  
Westminster City Hall  
64 Victoria Street  
London  
SW1E 6QP

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the enforcement of Penalty Charge Notices.
2. The Commissioner's decision is that the City of Westminster Council has:
  - Not provided sufficient reasons for applying the exemption where the cost of compliance exceeds the appropriate limit or for applying the exemption for legal professional privilege.
  - Taken too long to respond.
  - Not provided adequate advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - In relation to the material withheld under the exemption where the cost of compliance exceeds the appropriate limit, either disclose the information or issue a valid refusal notice in accordance with section 17 FOIA which does not rely on section 12.
  - Disclose the information withheld under the exemption for legal professional privilege.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply 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.

## Request and response

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5. On 21 May 2010, the complainant wrote to the City of Westminster Council ('the council'), describing an issue whereby written representations to challenge Penalty Charge Notices ('PCNs') were not being scanned onto the relevant system and requested information in the following terms:

"Documentation of any kind in any form evidencing:

- a) The revenue from PCNs in financial years 2008/2009/2010.
- b) Material to and from Philips defining their instructions and the costs entailed in financial years as set out in a) above, including contract with Philips (financially sensitive information may be redacted).
- c) Operating instructions given to agencies such as Vertex Data Science Ltd and any others concerning the duty to operate systems according to the law and both before 2009 as well as post 20 March 2009. All material evidencing what was done as a result of the events of March 2009.
- d) operating system for receipt of letters containing notices etc of representations and where and how such material is transferred from Warrington to Dingwall, if such be the case, and who has the responsibility for scanning.
- e) the internal files relating to the various complaints and representations held by the LA passing between officers and councillors.
- f) the annual reports on traffic enforcement given by the chairman of the relevant committee to members in the years 2007, 2008, 2009 and 2010.
- g) the file dealt with initially by Gary Blackwell head of litigation under reference no 1564871.
- h) In or about May 2009 the PAS made a finding the signs at junction between Savile Row and Conduit Street prohibiting traffic from driving across Conduit Street but requiring it to turn left; were misleading and contradictory. Reveal the files evidencing the revenue from cameras issuing PCNs in the period 2009 and 2010 and what steps have been taken to alter the statutory signs in consequence of the PAS recommendation.

And all information touching and concerning the issues raised of seeking to enforce penalties in circumstances as outlined above."

The complainant also asked for advice and assistance to describe the information he required.

6. The Council responded on 1 September 2010 as follows:
  - The information for a) and f) is in the public domain and therefore exempt under section 21 of FOIA as it is reasonably accessible elsewhere. A web link was provided.
  - It is estimated that to respond to b), c), e) and h) would cost £1,500 which exceeds the appropriate limit and therefore section 12 of FOIA applies. The council did not provide the complainant with advice and assistance in order for the request to be refined.
  - A narrative response to d) was provided.
  - The information for g) was refused under section 42 of FOIA as the information contains discussions between the council and its legal representatives and as a result are covered by legal professional privilege.
7. The complainant requested an internal review of the council's decision on 10 December 2010. This included a request for an explanation as to how the cost figure was arrived at and an assertion that legal professional privilege could not apply to advice from an in-house legal officer. The complainant also clarified that his request at c) was for operating instructions given by Westminster City Council to Vertex Data Science Ltd.
8. After intervention from the Information Commissioner, the council provided a review response on 23 March 2011. The internal review upheld the council's original decision to apply sections 12 and 42 of the Act. It provided a basic breakdown of the cost to respond to the request and stated that it was satisfied that the exemption at section 42 can apply to legal advice provided by in-house lawyers and that the public interest in this case is in favour of maintaining the exemption.
9. Within the internal review letter, the council also stated that it sent an email requesting clarification in respect of the requests at c), e) and f) on 9 June 2010. It stated that both no response to this clarification email was received from the complainant and that the response of 9 June 2010 did provide some indication of the context required although it was not as clear as it could be in explaining what information was required and why. The council explained that due to the lack of clarification, it was both reasonable to include in the calculation the cost of determining all the operating instructions which may have been issued to Vertex by Westminster City Council and that it was not possible to respond fully or identify the information requested. It also

stated that section 1(3) of FOIA provides that where reasonable clarification is sought, a public authority is not obliged to respond to a request for information.

## Scope of the case

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10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner telephoned the complainant to clarify the scope of the complaint and it was agreed that the investigation would focus on whether the council correctly applied the exemption where the cost of compliance exceeds the appropriate limit and the exemption for legal professional privilege.

## Reasons for decision

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11. The Commissioner's decision is that the City of Westminster Council has not provided sufficient reasons for applying the exemption where the cost of compliance exceeds the appropriate limit or for applying the exemption for legal professional privilege.
12. The Commissioner considers that the council's internal review letter was contradictory in that it stated that both no response to this clarification email was received from the complainant and that the clarification response was not clear. It also contained a contradiction in stating that it was both reasonable to include in the calculation the cost of determining all the operating instructions and that it was not possible to respond fully or identify the information requested.
13. The Commissioner requested further details in relation to the council's position that an unclear, or no response, had been received to its request for clarification of 9 June 2010 on 9 August 2011. As the only response received states that the council have been unable to locate a copy of the request for clarification, the Commissioner is unable to decide whether further information was reasonably requested and supplied, or indeed, whether the council intended to rely on section 1(3).
14. The council maintain that the complainant has not adequately described or clarified the context of the operating instructions requested. The Commissioner's view is that the complainant did state on three occasions in his original request that the issue was failure to scan representations made against PCNs. The Commissioner does acknowledge that the request was made within a three page letter and that the context in which the operating instructions were requested may

have been overlooked by the council. However, the Commissioner is aware that the council received two letters from the complainant on 31 March 2011 (one addressed directly to them and one addressed to the Commissioner and copied to the council) which detail the purpose of the request and adequately provide the context of the operating instructions requested.

15. The Commissioner's view is that the council has not addressed the costs issue in light of details provided to describe the context of the information requested and have continued to apply the costs to widest interpretation of the request without seeking further clarification or providing advice and assistance.
16. The Commissioner does not consider that the reasons given by the council in its response and internal review, as detailed in the 'Request and response' section above, and its response to the Commissioner's enquiries, received 10 November 2011, provide adequate detail for the Commissioner to make a decision on the application of the exemptions.
17. In relation to the exemption where the cost of compliance exceeds the appropriate limit, the council has not demonstrated that the individual requests at b), c), e) and h) relate to any extent to the same or similar information and can therefore be aggregated for the purposes of the costs calculation. The Commissioner acknowledges that the council did provide a basic breakdown in relation to the amount of time that would need to be spent on the following four activities;
  - determining whether it holds the information,
  - locating the information,
  - retrieving the information, and
  - extracting the information.

However, despite requests from the Commissioner, the council did not provide any information to enable him to evaluate whether the estimate in relation to each of these activities was reasonable, such as a calculation including a description of the type of work that would need to be undertaken. Therefore the Commissioner has no choice but to conclude that the exemption is not engaged.

18. In relation to the exemption for legal professional privilege, the council has stated that the information contains discussions between the council and its legal representatives and as a result is covered by legal professional privilege. The Commissioner requested further details as to how the exemption applies, such as whether the dominant purpose of the communications was to receive legal advice, whether the withheld

information is subject to legal advice privilege or litigation advice privilege and how the public interest in maintaining the exemption outweighs the public interest in disclosing the information. As the council did not provide further information in relation to the application of the exemption, the Commissioner has no option but to conclude that the exemption is not engaged.

19. The Commissioner considers that the council has been provided with ample opportunity to provide its rationale for withholding the requested information. The rationale should have been in place since the request was refused and therefore opportunities for providing this existed at the original refusal, at the internal review and on the numerous occasions this has been requested by the Commissioner as follows:
- Email on 27 April 2011 requesting a copy of the information withheld under the exemption for legal professional privilege.
  - Email on 9 August 2011 requesting a copy of the information withheld under the exemption for legal professional privilege and detailed justifications for applying the exemptions by 7 September 2011.
  - Telephone call on 29 September 2011 chasing the response as above.
  - Email and telephone call on 4 October 2011 chasing the response as above.
  - Telephone call on 10 October 2011 chasing the response as above.
  - Email and telephone call on 19 October 2011 chasing the response and agreeing a new deadline of 28 October 2011. The email stated that if no response was received by 28 October 2011 we will proceed to a decision notice.
  - Email on 31 October 2011 stating that if no response is received in 7 days we will recommend a decision notice ordering disclosure due to lack of evidence as to why the exemptions apply.
20. The Commissioner considers that the council took too long to respond as the request was logged by the council on 26 May 2010 and responded to on 1 September 2010, significantly outside of the 20 working days statutory time limit contained at section 10(1) FOIA.

## **Other matters**

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21. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

## **Internal review**

22. Paragraph 39 of the Code of Practice issued under section 45 of the Act (the 'Code') recommends that complaints procedures should:

"...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

23. Paragraph 40 of the Code states that in carrying out reviews:

"The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."

24. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that the public authority took over three months to provide an internal review. The public authority should ensure that internal reviews are carried out promptly in future.



## Right of appeal

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25. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Andrew White**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**