

Freedom of Information Act 2000 ('FOIA')
Re-use of Public Sector Information Regulations 2015
('RPSI')

Decision notice

Date: 4 April 2017

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant has requested to re-use Public Rights of Way information provided to him in response to a previous request under the Environmental Information Regulations. The Commissioner's decision is that Cambridgeshire County Council has breached regulation 12(2) of RPSI by unnecessarily restricting the way in which a document can be re-used. She has also decided that Cambridgeshire County Council has not breached regulation 8(1) of RPSI but has failed to comply with regulation 17(3) of RPSI.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Grant re-use of the requested information under the Open Government Licence version 3.0.
3. The public authority must take this step 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 4 December 2015 the complainant made the following re-use of information request:

"I would like to request permission to re-use the Public Rights of Way information you recently supplied in the form of an ESRI Shapefile, in response to my previous EIR request at [2]¹. The purposes for which these documents are to be re-used are: (a) to help improve the mapping of Rights of Way in OpenStreetMap, and (b) to convert the dataset to a more convenient format, and then make it available for others to re-use under an open licence. To achieve these, I would like permission to re-use the information under the Open Government Licence v3 [3]², without any additional restrictions or caveats."

5. The council responded on 4 January 2016. It said that it is permitting re-use of the information available from the maps on my.cambridgeshire.gov.uk with regard to public rights of way in accordance with Regulation 7(1) of RPSI. It said that the permission is granted on the basis of a charged licence for the marginal cost incurred in responding to the request, the charge for which is £72. However, the council also said that it has agreed to waive the fee in this instance. In addition, the council granted the licence for a term of 1 year which expires on 2 October 2016.

6. The complainant requested an internal review on 4 January 2016. The grounds for his complaint were as follows:

"A/ Your response was almost a carbon copy of your response to my previous request, and failed to consider any of the specific arguments I put forward regarding charging and conditions on re-use. I therefore believe that you have failed to comply with RoPSI regulation 8(1), by not responding "promptly". Given the lack of consideration needed for this latest response, I can see no reason why you could not have provided it sooner.

B/ I believe that your conditions for re-use -- in particular the restrictions on downstream re-use, and the fixed term / non-perpetual nature of the licence -- are contrary to RoPSI regulation 12(2)(a), in that they unnecessarily restrict the ways in which the information can be re-used. I specifically asked for permission to re-use the information under the standard Open Government Licence (OGL) v3, in order that it can be used for my stated purposes. The conditions you have imposed prevent both of these uses. As I explained in my request at

¹ <https://www.whatdotheyknow.com/request/p...>

² <http://www.nationalarchives.gov.uk/doc/o...>

[1]³, it is evident from the fact that other Councils already allow Re-Use of their Rights of Way data under the OGL that any additional restrictions above those contained in the OGL are unnecessary.

In a previous response you mentioned that the time-limit on the licence was to ensure users only made use of relatively up-to-date data. While I would obviously like to be able to take advantage of any updated data-sets as often as they are made available, for my intended uses it is important that the right is retained to re-use any old data that may still be present in products made/compiled in the past. In terms of OpenStreetMap it is important that any data entered can be re-used in perpetuity, as it would be impossible to remove it and all the associated editing history at a later date, even though the aim would be to update the map as often as updates to your data are available. You don't, for instance, force Ordnance survey to stop selling maps they've already printed based on your RoW data from a year or more ago, so why should any similar restrictions apply to me?

C/ Although you have agreed to waive the charges in this instance, I believe that your stated intention to charge them in the future is contrary to RoPSI regulation 15(2), in that the items in your breakdown cover more than the marginal costs incurred in respect of the reproduction, provision and dissemination of the documents. As I explained in my request at [1], the marginal cost to you is now zero since the data is available from a third-party website. I also explained in [1] that RoPSI regulation 15(3) does not apply to you, so no additional charges can be levied."

7. Having received no response to the internal review request, despite sending the council reminders on 19 February 2016 and 17 March 2016, the complainant contacted the Information Commissioner.

Scope of the case

8. The complainant contacted the Commissioner on 3 March 2016 to complain about the way his request for re-use has been handled. He said that he has three grounds of complaint as follows:

"A) I believe the Council failed to comply with RoPSI regulation 8(1), by not responding "promptly".

(B) I believe the Council has failed to comply with RoPSI

³ <https://www.whatdotheyknow.com/request/r...>

regulation 12(2)(a), as they have placed unnecessary restrictions on the way the information can be re-used.

(C) I believe the Council has failed to comply with RoPSI regulation 15(2), in attempting to levy future charges that go beyond the allowed costs."

On 1 April 2016, he added the following to his complaint:

"(D) I believe that the council has failed to comply with RoPSIR regulation 17(3), as it has not responded to my request for an internal review within 60 working days."

9. On 1 April 2016, the Commissioner wrote to the council requesting that it issue an internal review response to the complainant within 20 working days if it had not already done so.
10. On 11 May 2016, the complainant informed the Commissioner that he had still not received a response to the internal review request.
11. Regulation 18 of RPSI imports the enforcement and appeal provisions from the FOIA. Therefore the Commissioner can issue a decision notice in order to decide whether a public sector body has dealt with a request for re-use in accordance with the requirements of the Re-use of Public Sector Regulations 2015 (RPSI).
12. The Commissioner has considered whether the council is in breach of regulations 8(1), 12(2)(a) and 17(3) of RPSI.
13. The Commissioner has not considered the complaint relating to charges at this point as no charges have yet been made. To do so would be making a decision on something that has not yet occurred. If charges were to be made in the future, and a subsequent complaint made about those charges, she could then consider compliance with Regulation 15 of RPSI. The Commissioner can only make recommendations in respect of any charges levied under the RPSI.

Background

14. The complainant has made the re-use request in this case in order to improve the mapping of rights of way in OpenStreetMap (<http://www.openstreetmap.org>). According to the OpenStreetMap website, it is a '...map of the world, created by people like you and free to use under an open licence...' and '...is built by a community of mappers that contribute and maintain data about roads, trails, cafés, railway stations, and much more, all over the world'.

Reasons for decision

Regulation 12 – Conditions

15. Regulation 12 of RPSI states the following:

“(1) A public sector body may impose conditions on re-use, where appropriate through a licence.

(2) Where conditions are imposed they must not unnecessarily restrict—

(a) the way in which a document can be re-used; or

(b) competition.

16. In this case, the complainant believes that the council has placed unnecessary restrictions on the way the information can be re-used. Specifically, he believes that the restrictions on ‘downstream re-use’, and the fixed term / non-perpetual nature of the licence unnecessarily restrict the ways in which the information can be re-used.

17. In relation to the ‘downstream re-use’, the complainant explained that, as stated in his request, he wants to convert the dataset into a more convenient format in OpenStreetMap and make it available for others to re-use under an open licence. He said that in the terms proposed by the council, only he would get all the re-use rights and others (‘End-users’ in the council's terms) would not have the right to sub-license the right to access the information. He explained that it is necessary that other mappers and OpenStreetMap itself are able to re-distribute the derivative works under an Open Licence that allows others (downstream users) to further re-use the data and that this is not possible under the council's proposed terms. Therefore the terms imposed by the council represent a restriction on how the data can be re-used.

18. In relation to the fixed term, the complainant explained that it is important that any data entered into OpenStreetMap can be re-used in perpetuity, as it would be impossible to remove it and all the associated editing history at a later date, even though the aim would be to update the map as often as updates to the council data are available.

19. The Commissioner's guide to RPSI⁴ states that a public sector body may impose conditions on re-use but the conditions must be as open and non-restrictive as possible and that the easiest way to do this is to use

⁴ <https://ico.org.uk/for-organisations/guide-to-rpsi/>

the Open Government Licence ('OGL') which allows re-use of public sector information without charge for any purpose, commercial or otherwise, with minimal conditions. It also states that other licences may be appropriate in particular situations, including where there is a charge for re-use and that the UK Government Licensing Framework includes other types of standard licences.

20. The Commissioner asked the council to clarify if it has placed any restrictions on 'downstream re-use' and, if such restrictions have been made, to fully explain how these are as open and non-restrictive as possible and why they do not unnecessarily restrict the way in which a document can be re-used or competition. She also asked the council to fully explain how a licence term of 1 year is as open and non-restrictive as possible and why that does not unnecessarily restrict the way in which a document can be re-used or competition.

21. The council said that it is not clear from the Commissioner's letter what is referred to by "downstream re-use". It provided the following definition from The National Archives ('TNA'):

"Downstream: Activities in relation to the information which could be carried out or provided by another organisation should that organisation have access to the relevant upstream information. This is where raw or unrefined information is enhanced, manipulated and/or added to other inputs to create a retail product for businesses or consumers. The process of extracting and/or refining information can be undertaken by a PSIH, or viably in a commercial market by the private sector. Therefore the information falling into these categories will be variable over time as technology, public demand and the market advance."

22. It also referred to the following extract from the council's licence agreement in which re-use is granted:

"In consideration of the payment of the Fee, we are granting you the world-wide, non-exclusive rights to re-use the information, **including re-use by:**

- copying, publishing, distributing and transmitting the Information;
- adapting the Information;
- exploiting the Information commercially (including by combining it with other information, data or applications, or your own Product);
- allowing End-users to use the Information as authorised by an End-user Licence (except that an End-user shall not have the right to sub-license the right to access the Information)."

23. The council explained that, as set out in the licence, with regard to the right to re-use the raw data and the definition of "downstream re-use" provided by TNA, it has made no restrictions on the manner of re-use, as the complainant is allowed to use the information for whatever purpose is required in order to enable him to create the maps he wishes. It said that allowing consumers to access this data does not constitute downstream re-use and therefore it maintains that no such restrictions have been made.
24. In relation to the licence term of 1 year, the council said that the licence is limited to ensure that any future updates are taken into account. It explained that the majority of council data is currently released under the OGL and that the data that the complainant wishes to re-use is raw data which is currently published by way of the council's website in respect of Rights of Way. It said that this data is subject to regular updates and revisions and that the council is also currently digitising the records relating to Rights of Way and the definitive map and as such the data set that is currently available is subject to significant change within the coming 12 months. It said that it may be the case that the raw data currently licenced for re-use is included in any updates, however, it may also be the case that some of this data is no longer available due to inaccuracies. The council's position is that limiting the licence allows those discussions and changes to take place without the risk that incorrect data continues to be re-used after it has been removed from the council's website. As a result of this, the council decided to licence the data for a short period while these changes are ongoing. It said that this does not unnecessarily restrict the ways in which the data can be re-used, or restrict competition, as anyone wishing to re-use the data at this time would be subject to the same limits.
25. The council further explained that the year-long limit does not unnecessarily restrict the right of re-use as there are no limits on the way in which that data can be re-used within that year. It explained that the complainant could renew the licence in 12 months' time and could hold the changes to the data after this time. It said that, given the nature of the data, it would be unlikely to be the same data set in 12 months' time and therefore allowing the previous data set to be used would invalidate the aims of the project of ensuring that Rights of Way data is up to date.
26. The council also said that it is not the only council that has concerns around the impact on out-of-date Rights of Way data being left publicly available and a fixed-term licence that can be renewed is a way in which these concerns can be managed as it will provide a natural break to ensure up-to-date information is issued and used and to provide a measure of control around potential breaches of the licence. It said that this is particularly important as Ordnance Survey retain intellectual property rights in the data.

27. Having considered the above response, the Commissioner found it necessary to make further enquiries to clarify the council's position.
28. With regards to 'downstream re-use', the Commissioner explained to the council that in essence, the complainant suggests (and it appears so to the Commissioner) that bullet point 4 of the council's licence agreement ("allowing End-users to use the Information as authorised by an End-user Licence (except that an End-user shall not have the right to sub-license the right to access the Information)") restricts re-use to him alone, whereas under an OGL re-use is not restricted solely to the original requester. She clarified that in particular, the complainant has said the following:

"For my particular use-case, OpenStreetMap, it is necessary that other mappers and OpenStreetMap itself are able to re-distribute the derivative works under an Open Licence that allows others (downstream users) to further re-use the data. This is not possible under the Council's proposed terms."

The Commissioner referred to the explanation in the council's response:

"[Complainant] is allowed to use this information for whatever purpose is required in order to enable **him** (Commissioner's emphasis) to create the maps **he** (Commissioner's emphasis) wishes."

and asked the council to confirm if it is the case that this licence term is intended to restrict re-use here solely to the complainant, and if that is not the case, for it to explain more clearly what bullet point 4 actually means.

29. In relation to the 1 year licence term, the Commissioner noted that the OGL is used for the majority of the council's data. She asked whether it is the council's position that due to the nature and number of changes currently ongoing that it is reasonable in these circumstances to apply a 1 year term, however, after that period there is every possibility that the OGL could be used in relation to this information or whether the implication is that this data will only ever be made available subject to a 1 year licence period. She asked the council to clarify its position on this and provide more detail about the current ongoing changes and how licencing beyond 1 year could have adverse consequences if indeed that is the case. The Commissioner also asked the council to explain what it refers to as "a measure of control around potential breaches of licence" and the reference to this being "particularly important as Ordnance Survey retain intellectual property rights in the data."
30. The council's response explained that the licence allows the complainant to put the information on his website and for others to manipulate that information via that website to generate new views of the data, therefore it is allowed to be re-used by anyone using the complainant's

website. However, it also explained that should anyone wish to use that information on another website, the licence clearly states that the complainant cannot pass the information to them, i.e. the complainant cannot take an extract of that data and send it to another person to use in another system, and another person cannot extract the data from the complainant's website and make further use of it, for example, by uploading it to another site that will allow other users to manipulate the data. In other words, the licence is intended to restrict re-use to the complainant's website. It cannot be further used i.e. passed to other users for inclusion in other systems. It said that this is a reasonable restriction and allows the council to ensure that its Intellectual Property ('IP') is protected by knowing who has the information and that any use that was not granted by the licence would be followed up and the council would seek recompense including financial. It clarified that should anyone else wish to re-use this data, i.e. uploading it to their own database or similar, they would need to contact the council and be licenced for that information on the same terms as the complainant.

31. The council also said that these restrictions are in part to ensure that the terms of re-use, including that of Ordnance Survey ('OS'), are complied with and to reinforce that the information is displayed with suitable caveats, particularly as the information obviously is updated over time. It explained that, ultimately, people re-using this data could have an impact on the council and the aspect of retaining a clear process and some oversight on re-use will enable it to manage this effectively and without undue cost to the public purse (i.e. if someone displays out-of-date information and people trespass onto private land, the council will have to divert resources into dealing with the subsequent issues, including responding to the landowner's complaint, trying to establish contact with whoever is publishing inaccurate data and potentially having to take action for them to remove it etc).
32. Additionally, the council stated that the fact that for service provision reasons it needs to charge for this data means that allowing further re-use would compromise this whole process (i.e. if one person pays for the data and then everyone else can re-use it for free from there). It said that this is reasonable and is within the terms of the model charged licence from the TNA website and that it should be noted that the OGL is not the only model for licencing available to the council and RPSI do not stipulate that the council can only make information available under the OGL.
33. In relation to the 1 year licence term, the council responded to the Commissioner's additional enquiries as follows:

"...the council has applied a charged licence for the Public Rights of Way data, in line with the model charged licence available on the TNA website. The minimum chargeable term for a charged licence is 1 year.

Therefore the council would be unable to fix the limit for re-use at less than one year. Once the year has elapsed, any data released under the terms of the licence can continue to be used, without the further need to obtain a licence. This is again in line with the requirements of the model licence provided by TNA and it is therefore the council's view that allowing the data to be re-used in this manner is not restrictive and complies with the Regulations. However, the model licence is clear that the information does not revert to being issued under an OGL. The information is still licenced under the same terms. Should [complainant] wish to obtain further updated information after a year he would be required to contact the council for a licence for the additional data i.e. the updated information.

With regard to the ongoing nature of changes to the information involved in Public Rights of Way there are a number of different changes. The council is currently undertaking a project to bring together all of the sources of the information that comprise the Definitive Map with the aim of publishing this on the council's website. This has been a project ongoing for the last 10 years, given the volume of the information. Once digitised, the information on the website will be reviewed by the Highways Asset Team in line with their processes to ensure that it is up to date and continues to serve as the electronic version of the Definitive Map. As explained above, once the 1 year term lapses, information continues to be re-used under that licence but it is no longer guaranteed to be up to date. To not allow renewal of the licence for longer than 1 year runs the risk that the data would be out of date, and that the user of that data would not be aware. The short licence period is the minimum that can be applied under a charged licence but also ensures that the user is aware of the need to seek updates from the council due to the nature of Public Rights of Way information which are set out in the next section. By using the minimum licence period this ensure that the data is not unnecessarily restricted."

34. The council's further response also explained that the data the council makes available uses the OS Map data as a basis for its presentation and that this is licenced to the council to use for its own purposes and allows information to be reasonably re-used by other individuals. However, should someone use the information without the council's permission, the council retains the right to seek recompense for breach of its and OS's IP under the terms of its licence. In addition, the council said that it is reviewing its licensing arrangements and it is possible that once the Definitive Map project is completed, it will licence this information under the OGL.
35. The Commissioner considers that the reasons for the restrictions placed by the council on the way in which the information in this case can be re-used fall into two areas; namely to protect IP rights, and to ensure

that out of date data is not re-used. She has therefore considered these issues in turn.

36. Firstly, the Commissioner has considered the issue of protecting IP rights. She notes that 99 upper tier councils (excludes district) and 2 national parks licence their right of way data under OGL and this can be accessed via the link below. There are currently 174 upper tier councils in England and Wales.

www.rowmaps.com

37. As detailed above, initially the council had said that the restrictions in this case protect the IP rights of OS. OS is the national mapping agency for the government. It is a limited company wholly owned by the Secretary of State for Business, Energy & Industrial Strategy. It allows use of its data under various licences and agreements including the OGL⁵. The Commissioner spoke to OS regarding a potential infringement of its IP rights in this scenario. OS confirmed that it provides rights of way data under OGL and that it does not have concerns regarding its IP rights in the data in this case.
38. The Commissioner then spoke to the council who agreed that any IP rights of OS would not be infringed if the requested data was licenced under the OGL.
39. However, the council then suggested that re-use of the data in the way requested in this case, i.e. under the OGL, would infringe the IP rights of GeoPlace. Geoplace is a Limited Liability Partnership jointly owned by the Local Government Association (LGA) and OS⁶. The Commissioner spoke to GeoPlace and understands that Local Authorities provide Geoplace with data who then collate it to be used under licence. Geoplace informed the Commissioner that none of its IP rights would be infringed by granting re-use of the data requested in this case under the OGL.
40. Given the above, the Commissioner does not consider that the IP rights of OS and Geoplace would be infringed by granting re-use of the requested information under the OGL. Therefore she considers a restriction imposed due to an infringement of such IP rights to be unnecessarily restrictive.

⁵ <https://www.ordnancesurvey.co.uk/business-and-government/licensing/index.html>

⁶ <https://www.geoplace.co.uk/about>

41. In terms of the council's own IP rights, the Commissioner considers that there is alternative legislation to deal with any infringement; namely, the Copyrights, Designs and Patents Act 1988. This legislation allows the owner of the IP right to seek an injunction or damages in relation to an infringement. She therefore considers that it is unnecessarily restrictive to apply a licence under RPSI when there is alternative legislation to deal with IP issues.

42. Now turning to the issue of ensuring that out of date data is not re-used by granting re-use under a 1 year licence term. The Commissioner notes that the OGL requires an attribution to the source of the information as follows:

"You are free to:

- copy, publish, distribute and transmit the Information;
- adapt the Information;
- exploit the Information commercially and non-commercially for example, by combining it with other Information, or by including it in your own product or application.

You must (where you do any of the above):

- **acknowledge the source of the Information** (Commissioner's highlighting) in your product or application by including or linking to any attribution statement specified by the Information Provider(s) and, where possible, provide a link to this licence;

If the Information Provider does not provide a specific attribution statement, you must use the following:

Contains public sector information licensed under the Open Government Licence v3.0."

43. The Commissioner also notes that the OGL contains the following disclaimer:

"The Information is licensed 'as is' and the Information Provider and/or Licensor excludes all representations, warranties, obligations and liabilities in relation to the Information to the maximum extent permitted by law.

The Information Provider and/or Licensor are not liable for any errors or omissions in the Information and shall not be liable for any loss, injury or damage of any kind caused by its use. The Information Provider does not guarantee the continued supply of the Information."

44. Whilst the above does not specifically state that a user of information should seek regular updates, the Commissioner considers that it does

make the user aware that the information may not be up to date and accurate. She therefore considers that it is unnecessarily restrictive to apply a 1 year licence term under RPSI, rather than licence to re-use under the OGL, in order to avoid incorrect data being re-used when there are relevant caveats contained within the OGL.

45. Taking all of the above into consideration, the Commissioner has decided that the council has breached regulation 12(2) of RPSI by unnecessarily restricting the way in which a document can be re-used.

Regulation 8 - Responding to a request for re-use

46. Regulation 8(1) of RPSI states the following:

"A public sector body must respond to a request for re-use promptly and in any event before the end of the twentieth working day beginning with the day after receipt."

47. In this case, the council provided a response to the re-use request within 18 working days. The complainant has said that the council did not respond promptly.
48. The Commissioner has issued guidance on the 'Time limits for compliance under the Freedom of Information Act (Section 10)',⁷. Although this guidance relates to responding to requests made under the FOIA, given that the wording of regulation 8(1) of RPSI is substantially similar to the wording of section 10 of the FOIA⁸, the Commissioner considers that the guidance can be taken into account when making a decision relating to the time limits for responding to a re-use request.
49. The guidance states that the obligation to respond promptly means that an authority should comply with a request as soon as is reasonably practicable and whilst this is linked to the obligation to respond within 20 working days, it should be treated as a separate requirement. Therefore an authority will need to both respond promptly *and* within 20 working days. The 20 working day limit should be regarded as a 'long stop', in other words the latest possible date on which an authority may issue a response. An authority which provides its response close to, or on, the final day of the 20 working day limit ought to be able to both

⁷ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

⁸ "10.—(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."

account for, and justify, the length of time taken to comply with the request.

50. In this case the Commissioner asked the council to explain why the response in this case was sent 18 working days after the request was made and to provide any information which demonstrates that this response was sent 'promptly' given that it is virtually the same as the response sent on 2 October 2015 to the request made on 22 July 2015 to re-use the same information.
51. The council said that its Information Governance Team deals with all requests for access to information under both the DPA and the FOIA as well as requests under EIR and RPSI and that requests are responded to in a timely fashion, in discussion with the department/service who holds the requested information. It said that it considers that this response was sent promptly explaining that although the response sent out was similar to that sent in response to a previous request, each request is considered on its own merits, even if a template is used to generate the response. It further explained that responses are approved by the service holding the information and it takes time to consider requests including those for re-use, particularly whether or not any restrictions should be applied. It said that in this case, there was also a discussion with the service as to whether or not the fee for re-use should be waived in this instance and this meant that the response was sent as promptly as possible, given the current workload of the team, the need to review the licence terms and the ongoing nature of discussions with the complainant regarding his requests.
52. The Commissioner sought further clarification from the council as follows:

"It appears that the responses to questions 1 and 2 are fairly generic and we require more specific details in order to make a decision. Therefore, in relation to the request in this case, please can you provide further details relating to each of the following:

- The specific processes undertaken;
- The time taken for each of those processes (including dates);
- Any circumstances which had a bearing on the time taken to prepare the specific response to [complainant]; and,
- Copies of internal communications relating to the handling of this request.

I note that in response to Q2, the council stated "...each request is considered on its own merits, even if as template is used to generate the response. Responses are approved by the Service holding the information and it takes time to consider requests including those for re-use, particularly whether or not any restrictions should be applied."

In light of this can the council please explain why the 1 year licence term expiry date in the response of 4 January 2016, was stated as 2 October 2016? This is the same date as the response to a very similar request made by [complainant] on 22 July 2015, which the council responded to on 2 October 2015."

53. The council's response said that, in this particular case, it is unable to provide the dates at which specific processes were followed as there does not appear to be any records on its case tracker and the member of staff who was dealing with this case has now left the council. It did however, provide details of the specific processes undertaken as follows:

- "IG Officer assigned to the case
- IG Officer reviews the request to identify the requirements and any potential issues that may arise including reviewing any previous/related requests for the similar/same information
- IG officer arranges meeting(s) with the team holding the information to discuss the specifics of the request and any issues around the re-use of the requested information.
- Licences are drawn up with the assistance of legal services when required, particularly where charges may be made, in line with templates available on TNA website.
- IG Officer reviews documents and sends response to applicant"

54. As referenced above, the response in this case is substantially similar to a response dated 2 October 2015 to a previous request for re-use of the same information. The Commissioner notes that, apart from the FOI reference number and dates, the only substantive difference is that the response in this case states that the council has agreed to waive the fee. Given the similarity, on the one hand it does appear that the council could have responded sooner in this case. However, on the other hand, given that the difference relates to the waiver of a charge, the Commissioner can appreciate that some amount of time would have gone into consideration of waiving the fee. The Commissioner also acknowledges that any public authority is entitled to prioritise its workload to satisfy the range of demands made on it by stakeholders. She considers it unfortunate that the council do not have any records relating to the time taken to respond to this request, but, taking all of the above into account, the Commissioner does not consider that there is sufficient evidence that the council did not comply with this request as promptly as possible. Consequently, she finds that the council has not breached regulation 8(1).

Regulation 17 - Internal complaints procedure

55. Regulation 17 of RPSI states the following:

“(1) A public sector body must establish an internal complaints procedure for determining complaints relating to its compliance with these Regulations.

(2) A person who believes that a public sector body has failed to comply with any requirement of these Regulations may complain in writing to the public sector body in accordance with its internal complaints procedure.

(3) A public sector body must determine any complaint made under paragraph (2) within a reasonable time and thereafter notify the person of its determination without delay.

(4) Notification under paragraph (3) must be in writing and give reasons for the determination.”

56. The Commissioner notes that the complainant in this case requested an internal review on 4 January 2016 but the council failed to provide an internal review response.
57. The Commissioner therefore finds that the council has failed to comply with regulation 17(3) of RPSI.

Other matters

58. The Commissioner is concerned about the delay in responding to her enquiries in this case.
59. She wrote to the council on 25 May 2016 to make enquiries regarding regulations 8(1) and 12(2) of RPSI and requested a response by 23 June 2016.
60. Having not received a response to the enquiries, the Commissioner emailed the council on 29 June 2016 and 11 July 2016. She also telephoned the council on 5, 7, 13, 21 and 22 July 2016.
61. The council provided its response to the Commissioner on 22 July 2016.
62. Having considered that response, the Commissioner found it necessary to make further enquiries on 2 September 2016 to clarify the council's position. She requested a response by 16 September 2016.
63. Having not received a response to the further enquiries, the Commissioner emailed the council on 3 and 20 October 2016 and 10 November 2016. She also telephoned the council on 21 and 28 September 2016, and 11, 18, 20 and 25 October 2016, and 4, 8 and 9 November 2016.

64. The council provided its further response to the Commissioner on 14 November 2016.
65. In future, the Commissioner will consider the use of her powers under section 51 of the FOIA to issue an Information Notice in order to reinforce the need to comply with the enquiries being made and obtain the information required in order to make a decision.
66. The delay in responding to the Commissioner's enquiries may indicate resource issues at the council that need to be addressed. The council should ensure that its responses to the Commissioner's enquiries are as thorough and timely as possible in future.

Right of appeal

67. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

68. 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.

69. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF