

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2012

Public Authority: North East Lincolnshire Council

Address: Town Hall Square
Grimsby
North East Lincolnshire
DN31 1HU

Decision

1. The complainant has requested information about internal investigations conducted by, or on behalf of, North East Lincolnshire Council. The request was refused on the grounds of the costs for compliance, under section 12(1) of FOIA. During the Commissioner's investigation, North East Lincolnshire Council indicated that, in the alternative, it also intended to refuse the request under the provisions of section 14(1) of FOIA, on the grounds that the request was vexatious.
2. The Commissioner's decision is that North East Lincolnshire Council has not shown that the request was vexatious, and cannot rely on the provisions of section 14(1) of FOIA, but that council's estimate, that the cost for compliance with the request exceeds the statutory limit, was reasonable and the request was correctly refused on the grounds of section 12(1) of FOIA. However the Commissioner has also decided that the council failed to provide advice and assistance to the complainant in order for him to be able to submit a refined or revised request and therefore breached section 16(1).
3. The Commissioner requires the public authority to take the following steps:
 - Provide the complainant with advice and assistance in accordance with the section 45 Code of Practice to enable the complainant to refine this request to bring it within the cost limit.
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

5. On 12 July 2010, the complainant wrote to North East Lincolnshire Council (the council) and requested information in the following terms¹:

"Can I have a list of all internal investigations conducted by or on behalf of our council

Can I have all from 2004 (our council becoming a special executive) to the date that you answer

Can you list them with

- 1. Dates of incidence*
- 2. Date of investigations*
- 3. Summary outcome paperwork*
- 4. Department investigated.*
- 5. Department that did the investigation. (if there is a line management connection between 4 and 5 please indicate)*
- 6. Reason that sparked the query/investigation*

Also, can you provide me with any information (with a pointer) in relation to the requirement of council officers upon seeing illegal activity. (monitoring officers) To make that last question a bit clearer, I am asking do you have a statutory or legal responsibility to act if you see/identify illegal actions by council staff or officers."

6. The council responded on 14 July 2010. It stated that it had estimated that the time required for the activities needed to locate, retrieve and extract the information requested would exceed the appropriate limit of £450, or 18 hours work. It offered to provide advice and assistance to the complainant to help him to refine his request so the cost limit would not be exceeded, and invited him to contact it to discuss refining his request.
7. The complainant replied, asking it to provide the information easily available which would be accessible under the limit. The council replied, on 22 July 2010, referring the complainant to its constitution and anti-

¹ http://www.whatdotheyknow.com/request/can_i_have_a_list_of_all_interna#incoming-138622

fraud strategy, providing links to this information on its website. It refused the remainder of the request on the grounds of costs, as before.

8. Following an internal review the council wrote to the complainant on 9 August 2010. It stated that the complainant had not provided it with clear clarification which would enable it to respond to a refined request. It upheld the refusal of the request on grounds of cost.
9. There was further correspondence between the complainant and the public authority, which concluded with a further internal review on 9 December 2010 which continued to uphold the previous responses.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that the information had been refused, and gave his view that there were a number of serious events and that the council might be attempting to have him narrow down his request to exclude incidents which it does not wish to have exposed.
11. The Commissioner wrote to the council, requesting submissions in support of its position. It provided him with details of its estimate for the time required for compliance with the complainant's 12 July request. It also stated that, taking into account this request, other requests and substantial correspondence from the complainant, it had formed the view that the complainant's contact with it *"represented a targeted campaign of harassment and disruption against the Council and those individuals acting on its behalf"*. It therefore indicated that it intended to refuse 14 of the complainant's requests, including the present request, as vexatious under the provisions of section 14(1) of FOIA. It subsequently explained that, in the alternative, it continued to rely on its earlier refusal of the request on the grounds of cost.
12. The Commissioner informed the complainant of this additional ground of refusal, and that, having considered the council's estimate of its costs, his investigation would now need to also examine the council's refusal of the request as vexatious.
13. The Commissioner considers that the scope of this case is to examine the council's arguments for refusing the complainant's request as vexatious and, in the alternative, refusing it on the ground of the costs for compliance.

Reasons for decision

14. Sections 12 and 14 of FOIA state that:

Section 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 14: Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

15. The council has indicated that it has previously dealt with a significant volume of FOI requests, and continues to receive FOI requests and associated correspondence, from the complainant. It cites 10 requests submitted in 2009, nine requests in the period 25 May to 1 November 2010, and a further five requests between 1 November 2010 and 28 February 2011. The requests are often extensive in scope.

16. It believes that it has reached the point where some requests have become vexatious. The Commissioner understands that the public authority, having regard to the wider impact of the complainant's correspondence, wishes to rely firstly on its refusal under section 14 of FOIA and, if this fails, on section 12. The Commissioner will therefore first look at the position from the perspective of the requirements of section 14 of FOIA.

Section 14

17. In consideration of a refusal on the grounds of section 14(1) of FOIA, the Commissioner will consider the context and history of the request, as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors, to reach a reasoned conclusion as to whether a public authority could refuse to comply with the request on the grounds that it is vexatious:

- 1) whether compliance would create a significant burden in terms of expense **and** distraction
- 2) whether the request is designed to cause disruption or annoyance

- 3) whether the request has the effect of harassing the public authority or its staff
 - 4) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - 5) whether the request has any serious purpose or value
18. Both the public authority and the complainant have provided detailed arguments in response to the Commissioner's enquiries. These are summarised, as far as possible, in the analysis of the five tests, below.

Whether compliance would create a significant burden in terms of expense and distraction

19. The request was initially refused on the grounds of cost, and the council has provided the Commissioner with details of its estimate for the costs of compliance, which will be considered in the 'section 12' analysis later in this decision notice. This is, for the purposes of the section 14 analysis below, accepted as the council's reasons for claiming that compliance would create a significant burden in terms of expense.
20. The council also explains that the wider context of its dealings with the complainant includes a substantial body of FOI requests and correspondence, sometimes up to eight items of correspondence in a single day. Dealing with these constitutes a significant burden and distraction for the council staff required to respond.
21. The Commissioner is satisfied that providing the requested information, to the level of detail specified in the request, would constitute a significant burden on the public authority, and that the task of retrieving and collating this information would necessarily impact on those departments which conduct such investigations, distracting them from their regular activities, possibly (as the council points out) to the detriment of other citizens. The Commissioner therefore agrees that compliance with the request, as submitted, would create a significant burden in terms of expense and distraction.
22. However, while the council's response to the request indicated its willingness to provide advice and assistance to the complainant to help him to refine his request, the response itself did not contain any such advice and assistance. The Commissioner observes that providing the complainant with the sort of brief details of the extent of the investigations it conducts (ie as provided to the Commissioner for his investigation), might have enabled the complainant to appreciate the extent of the council's problem, and engage with it more constructively.
23. It is clear to the Commissioner, from an examination of the broader correspondence, that the complainant's impression of the council's

systems or procedures leads him to believe that many tasks are, in reality, considerably more straightforward than the council claims. The Commissioner makes no finding about whether he is correct, but observes that the council does not appear to have taken some obvious opportunities to set out its position more clearly to the complainant.

Whether the request is designed to cause disruption or annoyance

24. The council observes that the complainant's requests often develop into a dialogue, of sorts, and that sometimes its responses elicit further requests for increasing levels of detail or analysis, or other engagement with the council. For example, in the present case, the council provided references to documents on its website about its constitution and anti-fraud strategy. The complainant followed this up, requesting the council to point to exact page numbers and paragraphs within its constitution, or explain the applicable sections. The council suggests that this demonstrates that the complainant's request is designed to cause disruption or annoyance.
25. The council also refers to the complainant's tendency to include comments and criticisms in his correspondence, including a suggestion from the complainant that the council's offer of advice and assistance in its refusal of the present request was a 'delaying tactic'. It also refers to the complainant's more general habit of commenting on 'past and resolved issues' as further evidence of an intention to cause disruption and annoyance by repeated reference to such matters. The Commissioner observes that the correspondence for the request at issue here does not appear to contain any examples of this behaviour.
26. Further, the council explains that it has offered meetings with the complainant to discuss his issues and contact arrangements, and these have been refused. It suggests that this demonstrates the complainant's unwillingness to engage with the council to resolve the matter and reduce the burden on its resources, therefore his requests were not about resolving issues, but about causing disruption. The complainant has given the Commissioner his view that the council's offers of meetings were likely to be of very limited help, in the context of the circumstances in which they were offered.
27. The Commissioner understands that the offer of meetings this refers to relates to a review of the restricted contact measures the council had put in place to help it deal with the complainant's volume of correspondence. It is not apparent, from the council's submissions, that the meeting proposed would have been intending to address the complainant's underlying concerns, but rather that it would have been looking only at the measures in place to manage the complainant's contact with it. This appears, from the evidence available to the

Commissioner, to be the root of the complainant's unwillingness to participate: he argues that such a meeting would not assist him in pursuing his various concerns or grievances. Therefore, insofar as it seeks to suggest a measure of intransigence and disruptive intent on the part of the complainant, the Commissioner considers this element of the council's argument to be of limited help to its case.

28. The Commissioner refers to his observations about the council's 'advice and assistance' at paragraphs 63-65, below. While it is clear that the complainant's requests often give rise to further correspondence, it is also clear that the council's responses are not always as clear and straightforward as they could be. The complainant's reply to the council's initial response comments that the constitution, to which he was referred in that response, is a document of some 430 pages and he was unable to locate the information within that document which specifically addressed his request. The council, for its part, explains that no single element of this, or other documents the complainant was referred to, would answer his request in isolation and that this has been clearly explained to him.
29. The Commissioner notes that the council's second review of 9 December 2010 refers the complainant to section 5 of its constitution which "*can be found between pages 289 and 406*" and goes on to explain in more detail the relevance of this section to the complainant's request. The Commissioner accepts that this is the information which the council holds which is relevant to this part of the request, and that its statutory duty under section 1(1)(b) of the Act is simply to disclose it.
30. If the information is complex or voluminous, the council is not obliged to explain or clarify, and the Commissioner recognises that in doing so it has, to its credit, gone beyond what the Act obliges it to do at section 1(1)(b). However, information should be provided to an applicant in such a way that lets him determine whether the public authority's response is satisfactory and so that he can identify which information corresponds to which element of the request. If this is not clear, it is not unreasonable to expect further contact from an applicant who is attempting to decide whether or not his request has been complied with.
31. The Commissioner is therefore not persuaded that the complainant's conduct in pursuing the request after receiving the council's response demonstrates any vexatious quality in the request, because it is also reasonably clear from the correspondence that the complainant is striving to understand the information, not simply to harass or disrupt the council. The tone of the communication from the complainant, subsequent to receiving the disclosed information, appears to be reasonably constructive and is not aggressive.

32. The council's argument is, partly, that engaging with the complainant is burdensome, yet its responses to some of the complainant's requests and correspondence appear to invite further engagement, where a more straightforward response might have settled matters more efficiently. The complainant should not be penalised for this.
33. The test in this part of the Commissioner's guidance is whether the request can be shown to be **designed** to cause disruption or harassment. The council's arguments do not provide any evidence to this effect and therefore the Commissioner does not find that the complainant's requests are designed to cause disruption or harassment. He has, however, taken the council's arguments into account insofar as they relate to whether the request **has the effect of** harassing the authority or its staff, as below. For the reasons expressed above, he finds that a proportion of the complainant's correspondence about his requests can reasonably be argued to be due to the nature of the council's responses to his enquiries, which are not always as clear or helpful as they could be. He therefore does not give the arguments above any significant weight when considering the next test.

Whether the request has the effect of harassing the public authority or its staff

34. The council cites the complainant's habit of including comments and opinions in his requests, which are submitted via a public FOI website and therefore more broadly circulated than if they had simply been submitted to the council directly. It argues that, by choosing to use a public website in this way, the complainant is using this public forum as a way to spread his accusations more widely. It also argues that the complainant targets named individuals within the council for criticism and allegations, and intimidates individuals with threats to involve the media, professional bodies or the police.
35. The council also observes that the complainant occasionally sends comments to it via other channels, eg email, outside the public FOI website where the request was submitted. It argues that this shows that the complainant is selective about those comments which he chooses to make public, and those he makes more privately, and that this indicates that the complainant is pursuing a campaign. The Commissioner notes that the specific examples of such private comments cited by the council, appear to be consistent with various other comments placed in the public domain by the complainant so the council's argument is inconclusive. Further, the emails cited are typically sent, or copied, to parties who it is not at all clear would be contactable via the FOI website's facilities. He is not satisfied that the council has adequately made its case for this particular point.

36. The Commissioner wishes to make clear that the fact that a request is submitted (and visible) via a public website is not itself indicative of any vexatious intent, and he recognises that many people find the facilities of such websites helpful. He also accepts that using such websites should not inhibit an applicant from expressing themselves freely, other than as required for compliance with any terms of use which the website operators impose, and that critical comment is not at all unusual on such websites. The Commissioner therefore does not accept that the complainant's decision to use this website should, in itself, be deemed indicative of any vexatious intent.
37. He has, however, gone on to consider whether a reasonable person, in receipt of the sort of comments and criticism evidenced by the council and, particularly, being aware that some of these comments are public, would be likely to feel harassed or distressed by them. This is consistent with previous views of the First-Tier Tribunal (Information Rights), for example, in the case of *Jacobs v IC* (EA/2010/0041)². The Commissioner concludes that the examples cited by the council do not step beyond the bounds envisaged by the Tribunal in the case of *Jacobs*. He recognises, however, that prolonged and frequent contact with the complainant's correspondence might make council staff inherently more sensitive to his comments and criticisms. This, while understandable, risks classifying the complainant as vexatious, rather than the complaint.
38. With regard to the complainant's habit of naming individuals, the council has cited some specific examples in its submissions to the Commissioner. Some of those individuals are very senior council staff, who have also been singled out for criticism in a District Auditor's report³. Others, while not mentioned in that report, are also reasonably senior council staff, who might be expected to receive a degree of robust criticism from citizens as a normal part of their role. The examples cited to the Commissioner include the following:

"[...] I am saying that [name] has given you a false statement. I am saying that the actions of [department] have been fraudulent for years."

²

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20(w).pdf) at paragraph 27

³ <http://www.audit-commission.gov.uk/SiteCollectionDocuments/PublicInterestReports/nelincolnshirecouncilpir24jun2009REP.pdf>

"[...] it identifies when [staff role] from the council failed in [their] duties."

"[name and role]. Putting you as [role] could not have been more appropriate, it brings the [situation] full circle, from false accounting to fabricating evidence. Management at NELC 2001-2010" [sic]

39. These examples do not appear to the Commissioner to be the sort of hostile or abusive criticisms or defamatory remarks which might suggest that the complainant had overstepped the mark. They might be fairly characterised as falling within the range of 'fair comment' expressing, as they do, the complainant's genuinely-held views about the actions of certain council staff. The Commissioner acknowledges that, in the circumstances, council staff may have become 'sensitised' to the complainant's comments, and might therefore have genuinely found them to be harassing or distressing to some degree, but the test in *Jacobs* is expressed more strongly:

"the test of when a dialogue develops to the stage where it may be said to have become vexatious will be an objective one, not based on the particular sensitivities of the individual or individuals dealing with the person making the request. This particular factor will carry weight in the overall assessment only if distress or irritation would be caused to a reasonably calm, professional and resilient officer of a public authority"

The Commissioner recognises that this does not mean that the council staff are expected to endure abusive or otherwise unreasonable criticism, or are required to be more 'thick-skinned' than others. He is however not persuaded that the council has provided sufficient evidence to show that the complainant's requests or correspondence had become vexatious in this regard.

40. The council also cites the complainant's tendency to make what it characterises as 'threats' to take the matters to the police, professional bodies or the media. The council argues that if he has valid concerns, he should take those concerns to the relevant authorities and desist from making such threats to its staff. It comments that it has asked him to produce his evidence to support his various allegations, and he has not done so. It therefore considers the complainant's allegations to be unfounded and cites the dismissal of an earlier complaint by the Local Government Ombudsman. The complainant has confirmed to the Commissioner that he has made some complaints to external bodies,

including the District Auditor, the DCLG⁴, police and CIPFA⁵, some of which he understands were out of time, while others were premature due to his lack of sufficient evidence at the time. He explains that some of his requests have been designed to obtain suitable evidence to support his complaints, and that two complaints to the police and one to the DCLG are still ongoing.

41. Mindful of the First-Tier Tribunal's observations in the case of *Jacobs*, the Commissioner notes also that the complainant's criticisms are, in the main, directed at senior staff, or staff in public-facing roles, and that these are the sort of council staff who might therefore expect to receive a degree of robust comment, questioning or criticism. The complainant's comments, while direct, are neither offensive nor abusive, and the Commissioner does not consider the council's case in respect of this particular test to have been adequately made out.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

Whether the request has any serious purpose or value

42. The complainant's history with the council includes a previous complaint which was taken to the Local Government Ombudsman. After an investigation, the Ombudsman dismissed the complaint. The council argues that his more recent requests stem from that complaint, and can therefore be characterised as revisiting 'past and resolved issues'. This, it argues, shows that the complainant's behaviour is obsessive and manifestly unreasonable in that it seeks to reopen matters which have already been independently investigated. It also argues that this goes to its corresponding view, that the requests lack serious purpose or value.
43. The complainant believes that the council may have misled the Ombudsman during his investigation. He further defends his position by pointing out that the various requests cannot be said to link directly to the matter of his original complaint, and he therefore refutes the council's characterisation of them in that way.
44. He explains that his dealings with the council, in light of the matter which gave rise to his original complaint to the Ombudsman (and other related, and unrelated, dealings with the council), have given him good grounds to believe that the council is not conducting various aspects of its business properly. He cites critical Audit Commission reviews and

⁴ The Department for Communities and Local Government

⁵ The Chartered Institute of Public Finance and Accountancy

45. He also takes some support from the District Auditor's findings, above, and cites, as an example, the council's published statistics on its collection rate for council tax which suggests a 98% success rate. He has compared published statistics relating to the use of liability orders and bailiffs in enforcing the collection of council tax, and believes that this 98% figure cannot be reconciled with those published statistics.
46. He concludes that the council would have had to 'fudge' the figures to achieve this rate, and suspects that some of the improvements recognised by more recent Audit Commission reports may incorporate a degree of manipulation of key performance indicators by the council, and he explains that *"most of my requests are to find the fudging"*.
47. The Commissioner notes that only a proportion of the complainant's requests relate to the collection or administration of council tax and non-domestic rates (which was the subject of his complaint to the Ombudsman), and that any such related requests are not so clearly linked to his Ombudsman complaint that they should be seen as attempts to reopen or revisit that complaint. Rather, the complainant argues that his experience, and complaint to the Ombudsman, gave him cause to suspect problems within that part of the council's administration, and he is trying to uncover those problems. The Commissioner recognises that this is not the same as trying to force a re-hearing of his specific complaint.

Section 14, summary and conclusion

48. This is a case in which the arguments are not clear-cut. It is evident that the council finds dealing with the complainant difficult and time-consuming, and the impact on its operations and the demands the complainant's requests make on its resources should not be underestimated. The council asks the Commissioner to take this into consideration as the main factor in its arguments.
49. It is equally evident that the complainant is sincere in his views, and that at least some of his concerns have been borne out by a District Auditor's report, which appears particularly critical of the Executive Director Corporate Services and the Deputy Director of Finance in respect of one high-profile issue. The complainant's view is that the lack of controls evident in the District Auditor's report, and the council's failure to get to grips with those shortcomings, justifies his suspicions about further lack of controls elsewhere. This view is clearly not without

at least some foundation in light of successive Audit Commission reports which have been critical of council operations.

50. Furthermore, the council's submissions indicated that the complainant had made numerous FOI requests, and sent in approximately 500 other items of correspondence in the material period. While this is not disputed by the complainant, his version of events casts a different light on the matter. He has explained that, aside from his concerns about the proper functioning of the council, he has been engaged in two, legitimate, disputes with the council. He explains that approximately 80% of his correspondence with the council has been about those two disputes, and the remaining 20% constitutes his FOI requests and associated correspondence.
51. This was put to the council, which agreed that the proportions are fair. The Commissioner will not elaborate on the nature of the specific complaints which took up 80% of the complainant's dealings with the council as these are a private matter for the complainant, but he is satisfied that a substantial level of contact would have been reasonable in the circumstances. For the council to include these dealings in its arguments for the vexatious nature of the complainant's requests is not appropriate.
52. The Information Tribunal has commented that a consideration of a refusal of a request as vexatious may not necessarily lend itself to an overly structured approach, and has given its view that it is likely that the outcome will be obvious from an examination of the facts of the case. The Commissioner acknowledges this position and, insofar as his analysis of the five factors listed above leads him to any conclusion, that conclusion is that it is not obvious that the complainant's requests are vexatious.
53. The council does not appear to have taken some obvious opportunities to make its position clear to the complainant, and its responses may occasionally come across as disingenuous or evasive. The complainant cannot be criticised for challenging its responses in those circumstances.
54. Some of the council's supporting evidence for parts of its case appears to the Commissioner to be slightly contrived. Some of the its evidence, particularly relating to the volume of the complainant's correspondence, is taken out of context and attempting to apply it to this case is unreasonable. The Commissioner therefore felt compelled to examine its other arguments more closely and finds them, broadly, unsatisfactory in varying degrees. The Commissioner notes that the council seeks to rely, in the main, on its arguments relating to the burden, which suggests to him that it may be aware that its other points lack substance.

55. It is clear that the council's dealings with the complainant are highly unsatisfactory for both sides, and the burden placed on it is quite evident. The complainant, however, is sincere in his views and can take a fair degree of support from critical reports from the Audit Commission and District Auditor. The Commissioner finds that the complainant has sufficient serious purpose behind his requests that this ought, in the circumstances, to outweigh the burden on the council arising from his requests. The Commissioner also discounts that element of the burden caused by the complainant's dealings in relation to his two disputes, which are external to his requests for information. When that is disregarded, the burden is notably reduced. He finds that the council has incorrectly refused the complainant's request as vexatious under section 14(1) of FOIA.

Section 12

56. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which in this case is £450 as laid out in section 3(2) of the fees regulations.

57. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or documents containing it;
- retrieving the information, or documents containing it; and
- extracting the information from any documents containing it.

The calculation is £25 per person per hour

58. The scope of the request covers seven years, and the council explains that for the year 2009/10 alone, it received 612 complaints which required investigation, and a further 102 cases undertaken by Human Resources. The Commissioner understands that complaints will cover a wide variety of matters, from relatively straightforward service level complaints to more significant and complex matters, and all complaints will, at least to some extent, require some form of internal investigation. This annual level of complaints is believed to be fairly typical, consequently the request, as submitted, could potentially relate to about 5000 internal investigations (of all types) undertaken by the public authority.

59. The complainant comments that most of the information in his various requests is compiled into databases and is therefore easily searchable, but the council's responses tend to treat the information as if it is kept as paper records. The Commissioner has considered this with specific reference to the request which relates to this complaint, ie, the complainant's 12 July 2010 request, for:

"[...] a list of all internal investigations conducted by or on behalf of our council [...]" (etc)

60. The Commissioner's investigations find that the council does not maintain a complete database of its internal investigations, not least because the definition of an internal investigation is very wide-ranging. An internal investigation of some sort would be necessary for a complaint about a council officer, but would also be necessary for an HR grievance, or a complaint from somebody whose waste bins weren't emptied on the due day, or any number of other official complaints. The complainant now agrees with the Commissioner's view that these very different examples will not necessarily all be entered on a database, nor even on the same database, or that the database must contain all the 6 points he specifically requested.
61. The Commissioner therefore observes that even if a search of various databases did turn up lots of results quite quickly, additional manual searches to locate some of the specific information requested would still have been necessary, and also other manual searches to locate any other investigations which, for any reason, were not on a database. Given the large number of results for any given year, and particularly because his request covers several years, the Commissioner concludes that the council's estimate is reasonable and provides an adequate basis to refuse the request on the grounds that the cost for compliance would exceed the statutory limit of £450.
62. The Commissioner finds that the council correctly refused the complainant's request on the grounds of cost for compliance under section 12(1) of FOIA.

Section 16

63. Section 16(1) of FOIA deals with the duty of a public authority to provide advice and assistance to a person making a request, where it is reasonable to expect it to do so. When applying the fees regulations under section 12 the Information Commissioner expects that a public authority should have regard to its duties under section 16 of the FOIA to provide advice and assistance to the requestor.

64. The Information Commissioner is clear that where an authority refuses a request because the appropriate limit has been exceeded, it should, bearing in mind the duty under section 16 of FOIA to advise and assist an applicant, provide information on how the estimate has been arrived at and provide advice to the applicant as to how the request could be refined or limited to come within the cost limit
65. The duty in relation to advice and assistance under section 16 of FOIA is a duty to **provide** that advice and assistance (so far as it would be reasonable to do so), not a duty to **offer to provide** advice and assistance. The council's initial response did not provide advice and assistance, but simply offered to do so. While the Commissioner would not go so far as the complainant in characterising this as a 'delaying tactic', he notes that if it felt able to provide advice and assistance, it should have done so at the time. Offering to do so at some indeterminate future time will inevitably require further engagement from the complainant, and will have the effect of delaying matters.
66. Accordingly, in light of the evidence available, the Information Commissioner considers that the council breached section 16(1) and therefore did not comply with the section 45 code of practice, as it did not or offer sufficient advice and assistance in order to narrow or refine the request

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

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