

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 11 December 2006

Public Authority: London Borough of Sutton

Address: Civic Offices
St Nicholas Way
Sutton
Surrey
SM1 1EA

Summary

1. The complainant submitted a request to the public authority for information about parking fines issued over a six month period. The public authority refused to answer the complainant's request on the grounds that to provide the information would exceed the cost limit. The Commissioner investigated this claim and accepts that the public authority could not have answered the request within the cost limit. However, the Commissioner established that the public authority failed to provide the complainant with any advice and assistance. The also Commissioner established that the complainant's request had two separate elements and that it would have been possible for the Council to answer the first part of the request within the cost limit. The Commissioner considers that if the Council had provided advice and assistance to the complainant this should have led the Council to fulfil part one of the request. During the Commissioner's investigation the Council fulfilled part one of the request.

The Commissioner's Role

2. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

3. The complainant requested the following information from the London Borough of Sutton ('the Council') on 5 April 2005:

- I wish to know how many first stage appeals, against penalty notices issued on New Years day, were received by the parking services. By first stage appeals, I mean those initial appeals that are made before the penalty rises from 40 to 80 pounds.
- Please also tell me how many first stage appeals were made, on average, against penalty notices issued on other Saturdays over a period of six months excluding any Saturdays which coincide with public holidays.

4. On 6 April 2005 the complainant modified his request and informed the Council that:

'I forgot to add the appropriate datum requirement of the standard deviation of the average number of appeals. As you will appreciate, the datum of the average is not conclusive without having some distributional information'.

5. The public authority replied to the complainant on 12 April 2005 and confirmed that it held the information covered by the request of 5 April 2005. However, the Council explained that it estimated that the cost of complying with this request was above the appropriate limit and therefore it was refusing the request in accordance with section 12 of the Act.

6. The Council outlined to the complainant the reasons why it could not fulfil his request within the cost limit as follows:

'It is not possible to automatically interrogate the penalty charge database to establish on a penalty charge notice issue data basis whether we have had representations, and at what stage they were received. To determine this information will involve manually checking each individual entry on the database on the relevant dates'.

7. In its response, the Council noted that it did not hold the information covered by the modified request of 6 April 2005, i.e. the standard deviation, and that under the terms of the Act it was not obliged to undertake any statistical analyses in order fulfil a request, it was only obliged to supply any raw data in may hold.

8. The complainant asked for an internal review of this decision on 13 April 2005. He noted that if he was provided with the raw data requested in his email of April 5 2005, he would be prepared to calculate the standard deviation himself.

9. On 6 June 2005 the Council informed the complainant that the internal review upheld the original decision not to fulfil the request because the cost of complying would exceed the appropriate cost limit. The Council offered the complainant a

further explanation about how it held the requested information in order to clarify why it could not fulfil the request within the appropriate cost limit. The Council stated that:

'It is clear that the IT system used by the Parking Services cannot be interrogated to provide the data requested. The only way of providing the data would be to carry out a manual search of records. This would also include the need to check notebooks to identify why fixed penalty notices were cancelled... To obtain the data you requested would require the physical examination of approximately 4000 records and correlating them with the Attendants notebooks. The computer system does not have the capacity to provide the information'.

10. The Commissioner has included a legal annex to this decision notice which lists the sections of the Act and the sections of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') relevant to this case.

The Investigation

Scope of the case

11. On the 26 January 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant informed the Commissioner that he did not believe the Act had been correctly applied and asked the Commissioner to make a decision. The Commissioner understood the basis of the complaint to be the following:
 - That it was possible for the public authority to supply the information requested for a cost of less than £450.
 - That the Council had failed to offer the complainant advice and assistance in order to allow him to modify his request so that similar data could be provided.

Chronology

12. In order to support his allegation that the Council could provide him with the requested information for a cost of less than £450, the complainant provided the Commissioner with a detailed explanation of how he believed the Council processed penalty charge notices ('PCNs').
13. The complainant explained to the Commissioner that if a PCN is paid within 14 days of issue, the charge is £40, and if payment is received after this 14 day period, then the charge increases to £80. The complainant suggested that if a letter is sent to the Council to appeal a PCN within the first 14 day period, and that appeal is rejected by the Council, the 14 day discount period starts again on

the date of the Council's response to the applicant. He also explained that if a PCN had not been paid 28 days after it had been issued, or 28 days after the rejection of an appeal, the Council would contact the DVLA in order to establish the contact details of vehicle's register keeper.

14. The complaint suggested to the Commissioner that because of how the Council has to manage the processing of PCNs (as outlined paragraph 13), the requested information must be held on a database, and therefore there would be no need for the Council to inspect the parking attendant's notebooks in order to fulfil his request.
15. The Commissioner contacted the Council on 15 June 2006 and asked it to explain how it processed PCNs and for a description of how it would answer the complainant's request. The Commissioner also specifically asked the Council for a detailed breakdown of the estimated cost of supplying the requested information. The Commissioner asked the Council to provide this breakdown with reference to the four activities the Regulations state that public authorities can charge for when fulfilling a request, i.e. determining whether the information is held, locating the information, retrieving the information and extracting the information.
16. The Council replied on the 13 July 2006 and informed the Commissioner that although it does record the number of appeals that go the appeals service, this data is not linked to the date the PCN was issued upon and therefore this information could not be used to answer the complainant's request.
17. The Council explained that although it could run a query on its parking systems database to establish how many PCNs had been issued on a particular day, it could not run a query which would extract how many PCNs issued on a particular day had been appealed.
18. Instead, the Council explained that in order to establish whether an appeal had been made against a PCN it would have to review the correspondence attached to it. Within this correspondence would be a letter from the person who received the PCN requesting an appeal.
19. However, the Council noted that because a PCN had correspondence attached to it, this did not necessarily mean that it had been appealed, i.e. the correspondence could refer to another issue (e.g. warden errors, cases sent to bailiffs or written off tickets because the vehicle was registered abroad). Therefore, in order to ascertain whether a PCN had been appealed, the Council explained that it would have to review the correspondence attached to all the PCNs covered by the request.
20. The Council provided the Commissioner with a breakdown of how it would answer the first part of the request, i.e. the data for 1 January 2005. The Council explained that it had searched the database and had established that there were 279 tickets issued on 1 January 2005 and of those, 187 tickets were paid at the £40 rate, 7 were waived and 2 were spoiled due to NCP error. The public authority explained that this would leave 83 tickets with correspondence, which

would need to be analysed in order to establish if any of these tickets had been appealed.

21. It was estimated that it would take five minutes to locate and analyse the correspondence for each ticket in order to establish if that ticket had been appealed at the first stage. Based on the fact that for 1 January 2005 there were 83 tickets to be analysed, the public authority estimated that it would take 415 minutes (5 X 83) or 6.9 hours (1 day) to prepare an answer to the first part of the complainant's request.
22. Following this response, the Commissioner contacted the Council on 28 July 2006 and asked it to clarify a number of further points including whether it had provided the complainant with any advice and assistance so that he could submit a refined request which could be answered within the cost limit. The Commissioner also sought clarification from the Council that the process by which PCNs were processed as outlined by the complainant in paragraph 13 was correct.
23. The Council replied to the Commissioner on 31 July 2006 and confirmed that the process as outlined in paragraph 13 was accurate. The Council explained that the change in the status of the PCNs, i.e. the shifting of the discount period and the increase in the charge from £40 to £80, is automatically done by its computer based parking system. The Council explained that if this is the case, the status of the PCN within the database is changed to one of 'automatic progression'. The Council explained that because the automatic progression status prompts the system to alter the payment discount period relating to a PCN, there is no need for the database to have a search facility which can extract PCNs which have been appealed and link them to the date of issue.
24. In its response of 31 July 2006 the Council also informed the Commissioner that it was not able to explain why the complainant had not been offered any advice or assistance because the person who dealt with the query no longer worked for the parking division of the Council.
25. On the 8 August 2006 the Commissioner contacted the Council again and asked if it was possible to search the parking system for all PCNs that had been changed to automatic progression status and correlate these PCNs to the original date they were issued.
26. The public authority replied on 12 September 2006 and informed the Commissioner that to correlate the PCNs that had been changed to automatic progression with the original date of issue for each PCN 'would be a huge task and would not be practically possible'.
27. The complainant contacted the Commissioner by email on 26 September 2006 and suggested further arguments as to why the Council would be able to fulfil his request within the cost limit.
28. In this email the complainant included the Council's response to a different request which it had fulfilled. This request simply asked for the number of PCNs

- issued on 11 separate dates. The complainant highlighted to the Commissioner the fact that the Council had answered this request on the same day it was submitted and suggested that this was evidence that the data relevant to his request of 5 April 2005 must be held electronically and 'not produced by viewing each and every record'.
29. In his email of 26 September 2006 the complainant also suggested that if the data was held electronically, the process of answering his request of 5 April 2005 was a relatively easy and quick one. The complainant argued that all the Council had to do was search for all the PCNs for each Saturday in question then observe a particular field in order to establish if an appeal has been received for each PCN. The complainant stated that he accepted that there were roughly 4000 PCNs issued for the days covered by his request (i.e. 24 separate Saturdays). Based on these figures the complainant suggested that if the cost limit allowed for 18 hours work to be undertaken by the Council in answering his request, it would have 16 seconds per PCN to establish if any appeal had been made. (i.e. there are 64,800 seconds in an 18 hour period divided by 4000 records equals 16.2 seconds per record.) The complainant argued that if the figures were displayed in a database format, this was more than sufficient time and therefore the Council were in a position to fulfil his request with the cost limit.
 30. On the 18 October 2006 the Commissioner contacted the Council again and sought clarification from the Council on whether it would be necessary to physically check the parking attendant's notebooks in order to fulfil the complainant's request, or whether all necessary information needed to fulfil the request was stored electronically on the Council's parking system. The Commissioner also outlined to the Council the arguments the complainant had advanced in his email to the Commissioner dated 26 September 2006 (see paragraphs 28 and 29) and asked for the Council's comments on the complainant's suggestion of how the parking database could be interrogated to provide the information requested for a cost of less than £450.
 31. In a response dated 26 October 2006, the Council informed the Commissioner that the computer system used to manage the processing of PCNs is called 'Parking Gateway' and provided an explanation of the various criteria search fields which can be used to extract certain information regarding PCNs.
 32. The Council reiterated its position that it was not possible to interrogate the database in order to search for all PCNs on a particular day which had been appealed. The Council confirmed that the only way to establish if PCN has been appealed would be to review the correspondence for that particular PCN. However, the Council suggested that there was no option on the Parking Gateway which allowed it to select all tickets for a particular day which have correspondence attached. So, the Council would have to run a query request by date of issue which would produce all PCNs issued on that day whether they had correspondence on them or not. The Council once again suggested that for the Saturday 1 January 2005, there were 279 PCNs issued.
 33. The Council provided the Commissioner with screen shots of the Parking Gateway database in order to illustrate how the system worked. With reference to

these screen shots, the Council explained that the database could only display the details for one PCN at a time, and the operator would have to scroll through to the next screen to view the details for the next ticket. Therefore, for the date of 1 January, the operator would have to scroll through 279 screens in order to view the details for all 279 PCNs.

34. Within each window, there is a 'correspondence' icon, and if there is correspondence attached to the particular PCN, there will be a green tick next to the correspondence icon. The Council explained that it would then have to double click on the green tick to view the correspondence and establish if a ticket had been appealed. If there is no green tick, then there is no correspondence received, and the ticket was paid in full without any appeal.
35. The Council explained that it would only need to check the parking attendant's notebooks for the tickets that had been spoiled or cancelled prior to issue because when these tickets are imported into the system, there are no details as to why the ticket was spoiled or cancelled and the notebook we need to be checked for the attendant's comments.

Analysis

Procedural matters

Section 12

36. Section 12 of the Act states that a public authority is not obliged to comply with a request for information if it estimates that the request would exceed an appropriate cost limit.
37. The appropriate limit, as prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, is £600 for Central Government and £450 for other public authorities, with staff costs calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act. For the public authority to legitimately cite section 12 in this case, therefore, it needs to demonstrate that the time needed to comply with the request exceeds 18 hours.
38. The Commissioner accepts that the Parking Systems database used by the Council to process PCNs cannot be searched to provide a table of results which lists all PCNs issued on a particular day that have been appealed. The Commissioner is satisfied that the *only* method the Council can use to extract the requested information will involve reviewing the correspondence on every PCN issued on the Saturdays covered by the request. The Commissioner accepts that this process will be a lengthy, and therefore costly, exercise.

39. The Commissioner has established that the process of fulfilling the request will be as follows: there will be an average of 80 PCNs with correspondence on for each of the Saturdays in the six month period and accepts that it will take five minutes per PCN to establish if it has been appealed. Therefore, the Commissioner accepts that it would take, on average, 400 minutes (or 6 hours 40 minutes) to analyse and note the number of appeals for each Saturday. Given that there are 24 Saturdays in the six period covered by the request, the Commissioner accepts that it would take approximately 9600 minutes or 160 hours to extract the data needed to fulfil the request, and at £25 per hour, this represents a cost of £4000.
40. However, the Commissioner has noted that the complainant's request of 5 April 2005 was in two parts. The first part asked for the data relevant to the first Saturday of 2005 (1 January) and the second part of the request asked for the data relevant to the Saturdays covered by a six month period.
41. The Commissioner understands that the Council refused to answer the complainant's entire request, i.e. parts one and two, because the cost of fulfilling the request would exceed the appropriate limit. However, based upon the cost estimation outlined above, the Commissioner believes that the Council could have fulfilled part one of request without breaching the cost limit.
42. The Commissioner discussed its findings in paragraph 41 with the Council. Following this discussion the Council agreed to provide the complainant with the information covered by part one of the request. The Commissioner has established that the Council provided the complainant with the information covered by part one of his request in a letter dated 22 November 2006.

Section 16

43. Section 16 of the Act states that:

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

44. The code of practice issued by the Secretary of State under section 45 of the Act offers guidance to public authorities as to how the practice of providing advice and assistance should be discharged. When a public authority is not obliged to comply with a request because of the provisions outlined in section 12, the code of practice suggests that:

'The authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.'

45. The Commissioner is satisfied that the Council did not offer the complainant the opportunity to modify his request in order that it could be brought within the cost limit nor did it offer any explanation to the complaint about what information

covered by his request could have been supplied within the cost limit. Therefore, the Commissioner considers that the Council failed to comply with its duty under section 16 of the Act.

The Decision

46. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
47. The Council was correct to rely on section 12 of the Act as a basis to refuse the request. In reaching this decision the Commissioner has considered the fact that it was possible for the Council to answer part one of the request without exceeding the appropriate limit. However, the Commissioner is satisfied that the Act does not place an obligation on public authorities to automatically spilt any request it receives into different elements and consider whether it could comply with those elements within the cost limit. Therefore, the Commissioner is satisfied that the Council was correct to rely on section 12 to refuse both part one and part two of the request.
48. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
49. The Council failed to provide the complainant with any advice and assistance and therefore failed to fulfil its duty at section 16 of the Act. The Commissioner considers that if the Council had provided advice and assistance to the complainant this should have led the Council to explain to the complainant that it would be possible to answer part one of his request within the cost limit. As noted in paragraph 42, due to the involvement of the Commissioner the complainant has now been provided with the information he requested in part one of his request.

Steps Required

50. The Commissioner requires no steps to be taken.

Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 11 day of December 2006

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

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

Section 12(2) provides that –

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

Section 12(3) provides that –

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

Section 12(4) provides that –

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

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

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

Section 12(5) provides that –

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

Duty to provide advice and assistance

Section 16(1) provides that –

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

Section 16(2) provides that –

“Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

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

Estimating the cost of complying with a request

Section 4(3) provides that –

“In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

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

Section 4(4) provides that –

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