

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 26 March 2007

Public Authority: Audit Commission
Address: 1st Floor
Millbank Tower
Millbank
London
SW1P 4HQ

Summary

The complainant made four requests for information about an audit carried out in 1990/1991 by the Audit Commission on Wakefield Metropolitan District Council. The Audit Commission initially stated that it did not hold information in response to three of these requests, but following a further search located information in response to two of the requests and has now provided this information to the complainant. The Audit Commission further stated that it could not respond to the fourth request, as doing so would exceed the appropriate limit, which the Commissioner decided it was entitled to do.

The Commissioner's Role

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

The Request

2. The complaint relates to four separate requests, made on 31 January 2005, 7 March, 8 April 2005, and 23 March 2005.

Request 1 – 31 January 2005

3. In his letter of 31 January 2005, the complainant asked the Audit Commission (the AC) to provide him with information which he had already requested in his letters of 22 September, 27 October and 29 November 2004. This request is outlined in full at paragraph 19 below. On the same day (31 January 2005), the AC provided the information apart from the following two items, which it stated that it did not hold:

- Email of 30 December 1994 from [name redacted] to [name redacted]
- Email of 9 January 1995 from [name redacted] to [name redacted]”

Request 2 - 7 March 2005

4. In his letter of 7 March 2005, the complainant requested the following information:

“copies of what I believed to be the Audit Final Claim Forms, relating to the final recoupment of subsidy:

1990/91 (FH90.03)
1991/92 (FH91.03)
1992/93 (FH92.03)
1993/94 (FH93.03)
(Pre-Audit) 1994/95 (FH94.03)
Second Advance Claim Form 1995/96 (FH95.02)”

5. The AC provided the complainant with the 1990/91 claim form on 19 April 2005, but stated that it did not hold any claim forms from the other years.

Request 3 - 8 April 2005

6. In his letter of 8 April 2005, the complainant requested

- a copy of a document of 16 March 1995 prepared by [name redacted], and
- a copy of a letter referred to in a memorandum of 30 November 1994 from [name redacted] to [name redacted]

7. On 19 April 2005, the AC wrote to the complainant to state that it did not hold this information.

Request 4 - 23 March 2005

8. In his letter of 23 March 2005, the complainant requested internal correspondence that [name redacted] had access to in addition to that already provided to him. On 19 April 2005, the AC responded by refusing the request because, in its view, the appropriate limit of £450 under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) had been exceeded.

9. The complainant expressed dissatisfaction with the responses to the requests and the AC conducted a review of all four requests, issuing a response on 29 November 2005.

The Investigation

Scope of the case

10. On 19 December 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Following further correspondence with the complainant, the Commissioner wrote to the complainant on 9 May 2006 and again on 2 June 2006 to confirm how he understood the complaint and stated that he would consider the following points:
 - whether the AC did actually hold the information sought in requests 1, 2 and 3
 - whether the AC correctly refused request 4 on the basis that it would exceed the appropriate limit
11. The complainant also raised another issue that is not addressed in this Notice because it is not a requirement of Part 1 of the Act.

Chronology

12. On 23 May 2006, the Commissioner wrote to the AC asking for information to assist him in investigating the two issues of complaint outlined above under 'scope of the case.' The AC provided the Commissioner with information in response on 22 June 2006. On 27 June 2006, the Commissioner wrote to the AC seeking further information as a result of the response of 22 June 2006. On 25 July 2006, the AC provided the Commissioner with further information. In telephone calls of 2, 9 and 10 August 2006, the complainant provided the Commissioner with further information and clarification.

Analysis

Requests 1 and 3

13. The AC has provided the Commissioner with the letter it sent to the complainant on 25 July 2006 which provides information in response to the two emails and the two documents requested on 31 January 2005. Whilst the AC initially stated on 31 January and 19 April 2005 that it did not hold this information, the Commissioner's prompting led the AC to conduct a further search and locate the information. The AC has stated that the information was inadvertently missed on the initial search because it was:
 - 1) searching for emails, whereas the information was actually in the form of memos

- 2) searching for a report whereas the front page of the report does not look like a standard AC report, and
 - 3) searching for a letter referred to in memo from the date requested, whereas the information was actually referred to in a memo from a different date
14. Although the AC initially stated that it did not hold this information, it has subsequently located it and provided it the complainant.

Request 2

15. The AC provided the complainant with the 1990/91 claim form on 19 April 2005, but stated that it did not hold any claim forms from the other years requested on 7 March 2005. The AC has informed the Commissioner that claim forms would usually be destroyed after 6 years from the date the claim is accepted. The claim in the 1990/91 form was accepted in 1995 and so it would have been destroyed in 2001 under normal circumstances. However, before this period had elapsed, the complainant had pursued concerns about the 1990/91 claim form. These concerns led to the following action:
- the complainant taking civil action against the AC in 1999
 - the complainant submitting two letters of complaint to the AC in 2001
 - the complainant appealing the outcome of the 2001 complaints in 2002
 - the complainant asking the Independent Adjudicator to adjudicate in 2003
16. As a result of this further action taken in relation to complaints about the 1990/91 claim as outlined above, the AC retained that claim form. The AC has confirmed that the complainant was only concerned with the 1990/91 claim and therefore there was no need to retain the claim forms for the other years that were requested. Whilst the AC has no record of deletion of the other forms, it has confirmed that it carried out the following searches for them:
- a thorough check of archives and files held at the Kirklees, Leeds, London and Bristol offices
 - archive listings were re-checked and the files described therein considered to be relevant were searched, whereupon the 1990/91 claim form was found and provided
 - some files were retrieved from deep storage which could conceivably have a link with the complainant's concerns
 - the Compliance Manager searched all the files as part of the investigation into the complainant's complaint
17. In light of the above, the Commissioner is satisfied that the AC does not hold any additional claim forms to that of 1990/91 already provided.

Request 4

18. On 19 April 2005, the AC refused the complainant's request of 23 March 2005 under section 12(1) of the Act by saying that the appropriate limit of £450 under the Fees Regulations had been exceeded. AC had reached this conclusion as a result of aggregating the following five requests for information:

A) 31 January 2005 (referencing requests of 22 September, 27 October and 29 November 2004).

19. This request contained 8 elements as follows:

1. Copy of the review undertaken by the Director of Accounting Practice and referred to in the letter from the Controller dated 13 October 1993.
2. Copy of the letter of 30 November 1994 from [*name redacted*] to the Chief Executive of Wakefield MDC.
3. Copies of all communications, emails and documents referred to in the memorandum of 9 January 1995 from [*name redacted*] to [*name redacted*].
4. Copies of all other electronic mail messages within District Audit, the Commission and between District Audit and the Commission relating to your complaint in respect of Wakefield MDC's housing revenue account subsidy claims from 1990/91 to 1995/96.
5. Details of [*name redacted*]'s explanation in respect of the second paragraph of page 3 of the letter of 18 July 2003 to you from [*name redacted*]
6. Details of legal advice as referred to in the Adjudicator's report (page 3 recommendation (ii))
7. The associated report to that of the Adjudicator's provided to the Commission Board meeting on 15 October 2004
8. A copy of the relevant minute of the Commission Board on 15 October 2004

B) 7 March 2005

20. This request contained the following two elements:

1. Request for grant claim forms for 1990/91, 1991/92, 1992/1993, 1993/94, pre-audit 1994/95 and second advance claim form 1995/96
2. Request for details of any reference made to the complaint at the November 2004 meeting of the AC Board.

C) 23 March 2005

21. Request for internal correspondence that [*name redacted*] had access to in addition to that already provided to the complainant

D) 31 March 2005

22. Repeated request for the grant claim forms (initially requested on 7 March 2005)

E) 8 April 2005

23. Request for a copy of a document of 16 March 1995 prepared by [name redacted] and a copy of a letter referred to in a memorandum of 30 November 1994 from [name redacted] to [name redacted].

Can the requests be aggregated?

24. In order for a request to be aggregated under the Fees Regulations, the requests must relate to the same or similar information and must be received within a period of 60 consecutive working days.
25. The first condition is satisfied in that the complainant himself stated in a letter of 29 September 2005 that he had expressed concerns in respect of a local authority and the AC regarding a claim from the Government for housing subsidy. He then stated that he sought access to documents not previously seen. As such, all the aggregated requests above relate to that information that the complainant believed he had not had access to in relation to the claim. In addition, the AC has confirmed that all the requests relate to the claim forms for Wakefield Metropolitan Borough Council and the subsequent complaints raised by the complainant and the investigations into those complaints.
26. The second condition is satisfied because the number of working days from 31 January 2005 (when the first request was submitted) until 11 April 2005 (when the final request was received) does not exceed 60.

Would the cost of complying with the requests exceed the appropriate limit?

27. Now that it has been established that the AC may aggregate the requests, the next question is whether the appropriate limit of £450 has been exceeded. Under regulation 4¹ of the Fees Regulations, the AC can only take account of the costs it reasonably expects to incur in relation to the request(s) in –
- determining whether it holds the information,
 - locating the information, or a document which may contain the information,
 - retrieving the information, or a document which may contain the information, and
 - extracting the information from a document containing it.
28. Regulation 4¹ of the Fees Regulations provides that these costs are to be estimated at £25 per person per hour. Another way to consider the calculation is to divide the limit of £450 by the £25, meaning that the AC can refuse to respond to a request where it estimates that it will take longer than 18 hours to respond.
29. Using the above numbering and lettering for the aggregated requests outlined at paragraphs 19 to 23 above, the AC has stated that it spent the following time to comply with requests A to E (except for request C).

¹ See legal annex for relevant extract of the legislation

A) 1, 2 and 3 – 4 hours

30. The AC spent two hours searching for the information in relation to request A)1 and four hours searching for the information in relation to requests A)2 and 3.

A) 4, 5, 6 and 7 – 5.5 hours

31. An officer of the AC spent two hours searching for information in relation to all these requests. A separate officer spent two hours searching for notes of meetings and correspondence with the Independent Adjudicator. The adjudicator spent an hour searching for this same information. The Secretary to the Commission Board spent half an hour searching for information in relation to request A)7.

B) 1 and 2 – 3.5 hours

32. The AC spent three hours searching for information in relation to request B)1. The Secretary to the Commission Board spent half an hour searching for information in relation to request B)2.

D) and E) – 3 hours

33. The AC spent three hours searching for, determining and reviewing the information in relation to both these requests in order to issue a response to the complainant.
34. The searches up to this stage had been conducted at AC offices other than the Leeds office. In addition, 5 hours 50 minutes was spent by the AC searching the Leeds office. This is where the audit files were originally held prior to them being sent to other offices following the complaints and investigations instigated by the complainant. Therefore, it was thought useful to check the Leeds office in case information was still retained there.
35. 21 hours 50 minutes had been reached at this stage, therefore exceeding the 18 hour appropriate limit. This is without considering request C itself, in respect of which the AC has stated that it would take a considerable amount of time to determine what is held. For request C, the AC has stated that it would have to extract every reference made to internal correspondence in the adjudicator's report, then check all correspondence to determine which files the adjudicator had been given access to. These would then have to be cross-referenced against the information already provided to the complainant. Any information not yet provided to the complainant would then have to be located within numerous files dating from approximately 1990 to 2004. The AC has estimated that this alone would take in excess of 18 hours.
36. The AC has assured the Commissioner that the appropriate limit has already been exceeded and supported this assurance with the explanation outlined above. The Commissioner is satisfied that the appropriate limit has been reached in respect of the aggregated requests so far complied with.

The Decision

37. The Commissioner has decided that the public authority has provided all the information it holds in relation to requests 1, 2 and 3. As such, it has complied with section 1(1)² of the Act.
38. The Commissioner has also decided that the public authority had already exceeded the appropriate limit under the Fees Regulations² in order to comply with requests 1, 2 and 3. As a result, the public authority was not obliged to comply with request 4 as permitted by section 12(1)² of the Act.

Steps Required

39. The Commissioner requires no steps to be taken.

² See legal annex for relevant extract of the legislation

Right of Appeal

19. 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 26th day of March 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal annex

Data Protection (Appropriate Limit and Fees) Regulations 2004

Regulation 4 of the of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 provides that –

(1) “This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent, apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply

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

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

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

(d) extracting the information from a document containing it

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

Freedom of Information Act 2000 (The Act)

Section 1(1) provides that -

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

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 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.”