

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 February 2010

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant made a series of 167 requests to the Ministry of Justice for information relating to various issues regarding the Employment Appeals Tribunal. The public authority refused the requests under section 12(1) on the grounds that the cost of complying would exceed the appropriate limit of £600 for central government departments. During the course of the Commissioner's investigation the public authority informed the Commissioner that it also considered that the requests were vexatious within the meaning of section 14(1) of the Act. The Commissioner has investigated the complaint and has found that section 14(1) applies and that the public authority was not obliged to respond to the complainant's requests. However, the Commissioner also found that by failing to inform the complainant that it was relying on section 14(1) within 20 working days of receiving the requests, it breached section 17(5) of the Act.

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. On 5 April 2006 the complainant wrote to the Employment Appeals Tribunal and made a series of 167 requests for information. The information requested included matters relating to equal opportunities, the composition of the EAT and its administrative staff, complaints against individual Judges and the type and length of EAT hearings.

3. The Employment Appeals Tribunal is a part of the Tribunals Service which is an executive agency of the Ministry of Justice. It is the Ministry of Justice that is a public authority for the purposes of the Act and therefore any future references to 'the public authority' are references to the Ministry of Justice.
4. The public authority wrote back to the complainant on 3 May 2006. At this point it explained that in order to provide the requested information a number of people within the public authority would need to carry out an in-depth search of its files. The public authority explained that section 12 of the Act makes provision for the refusal of a request where the cost of complying would exceed the appropriate limit. It went on to say that the request was so widely framed that it would take it in excess of 3 ½ working days to go through the files and determine appropriate material and locate, retrieve and extract information which would exceed the appropriate limit which is set at £600 for central government departments. It suggested that the complainant may wish to refine her request by narrowing the scope to a couple of particular issues and to be more specific about what information she was particularly interested in including any dates or periods of time relevant to the information required.
5. The public authority also added that some of the requested information could be found on its website and therefore was exempt from disclosure under section 21 which provides for an exemption where information is readily accessible by other means.
6. The complainant wrote back to the public authority on 17 May 2006 questioning the public authority's response to her requests. The complainant said that she did not believe that it would take as long as the public authority had claimed to retrieve the requested information as many of the questions only required a 'simple answer'. The complainant now repeated her requests, except that a number of requests which appeared to have been duplicated in the original were removed. This left 161 requests which were technically a refined series of requests. These 161 requests are quoted in full in an annex to this decision notice. For the avoidance of doubt, the numbering used in this decision notice refers to this 'refined' series of requests.
7. The complainant's letter of 17 May 2006 prompted the public authority to carry out an internal review of its handling of the requests and it presented its findings on 12 October 2006. It concluded that it was correct to refuse the requests on the grounds of excessive cost. It confirmed that it held information falling within the scope of the request but that under section 12(1) it was not obliged to comply if it estimates that the cost of doing so would exceed the appropriate limit. It reiterated that it estimated that the cost of complying with the request would exceed the appropriate limit of £600 'by some margin'.
8. Whilst the public authority upheld the decision to refuse the requests under section 12(1) it acknowledged that it could have done more to offer advice and assistance in accordance with section 16 of the Act. The public authority now attempted to group the complainant's requests into broad themes. In doing so the public authority now responded to some requests by disclosing the information or confirming that it was not held. The public authority also indicated whether the

information may be held by another public authority, whether the information was likely to be exempt under part II of the Act or whether the information was available by other means. In grouping the requests together the public authority used the numbering from the complainant's refined requests.

The Investigation

Scope of the case

9. The complainant initially contacted the Commissioner on 27 May 2006 to complain about the way the MOJ handled her request for information. The complainant specifically asked the Commissioner to consider whether the MOJ had acted within the timescales set out in section 10 of the Act and whether its reliance on section 12 was correct. The complainant contacted the Commissioner again on 13 October 2006, after the public authority had responded to her letter of 17 May 2006, reiterating her initial complaint. For the avoidance of any doubt the Commissioner has investigated and made a decision about the refined series of requests made on 17 May 2006.

Chronology

10. The Commissioner wrote to the MOJ on 20 December 2006 to enquire about how it arrived at its cost estimate and requested clarification as to which of the 161 pieces of requested information it deemed accessible by other means.
11. The public authority responded to the Commissioner on 23 March 2007 and referred the Commissioner to its internal review of 12 October 2006 for details of what particular information was available by other means. As regards its cost estimate, the public authority explained that taking an indicative estimate of 10 minutes to deal with each question, the time taken to comply with all of the requests would run to over 1600 minutes (or over 26 hours) of work. It added that its experience of dealing with freedom of information requests was that 'some of the requests are likely to be particularly time consuming in particular around complaints handling'.
12. On 29 October 2007 the Commissioner wrote back to the public authority to ask if it could provide further details and a more in-depth explanation as to how it had arrived at its fees estimate.
13. The public authority responded to the Commissioner on 11 December 2007. First of all the public authority reiterated that it had asked the complainant to refine her request but that her second series of requests was not substantially different to the first series of requests (161 questions instead of 167 questions) and so was refused on cost grounds.
14. The public authority said that it had looked at the complainant's requests again and was of the view that '10 minutes per question' was perhaps a conservative estimate. To illustrate, it said that one question in particular (Q – 34: Have any

- judges/lay-members who adjudicate at the EAT in the last 7 years, written any books on the law in relation to discrimination, employment rights and employment protection?) took approximately 3 hours to research and 'involved numerous email exchanges and phone calls in order to determine, first of all, whether or not judges and lay-persons are required to inform anyone if they have written a book'. The public authority now said that under section 12 of the Act it was only obliged to make a 'reasonable' estimate of the time required to work out whether or not it holds the information and the time to locate, retrieve and extract it. It said that it was not obliged to make a complex assessment of each question in turn where it is obvious on the face of it that the information request will exceed the cost limit.
15. On 27 February 2009 the Commissioner contacted the public authority once more for further clarification on its reliance on section 12 and in particular whether it was claiming that it held the requested information but that section 12(1) applied because the cost of complying with the request would exceed the appropriate limit; or if it was applying section 12(2) because the cost of confirming or denying if the information was held would itself exceed the appropriate limit. The Commissioner also sought clarification on the extent to which the public authority was relying on section 21.
 16. The public authority wrote back to the Commissioner on 8 April 2009. It explained that for some of the requests it could neither confirm nor deny if it held the information because the costs of determining if it held the information would exceed the appropriate limit. To illustrate why section 12 applied the public authority provided the Commissioner with its estimate of the costs of complying with just some of the requests – requests for statistical information and information regarding judges' sittings. It estimated that it would cost £1156.25 to deal with these requests alone and provided the Commissioner with a full breakdown of the different costs it reasonably expected to incur. Based on the fact that it estimated that the costs of dealing with just some of the requests would exceed the appropriate limit, it maintained that it was correct to conclude that the requests in their entirety could be refused on cost grounds. Notwithstanding this, the public authority said that it had re-examined the requests to see if any further information could have been provided to the complainant. It now provided the Commissioner with additional information in answer to some of the complainant's specific requests. It said that it believed this approach was 'firmly in keeping with the spirit of the Act rather than refusing the request outright on cost grounds'. The public authority subsequently agreed to make this information available to the complainant on a discretionary basis.
 17. On 5 June 2009 the public authority wrote to the Commissioner clarifying for which particular requests it held information and for which requests it could neither confirm nor deny if information was held. It also confirmed which requests it considered it had complied with in full and to which requests it was applying section 21(1), on the grounds that the information was reasonably accessible by other means.
 18. On 9 July 2009 the Commissioner wrote back to the public authority to further explore the public authority's application of section 12(1). The Commissioner also discussed the possible application of section 12(4) which provides that where two

- or more requests are received from the same person the costs of complying with the requests may be aggregated.
19. The public authority responded to the Commissioner on 12 August 2009. In attempting to clarify how it was applying section 12 of the Act the public authority described the complainant as having submitted 'one information request which makes multiple requests for different information'. It recognised that under section 12(4) where an applicant has made one or more requests the cost of complying with the requests may be aggregated if they are sufficiently similar. However the public authority maintained that section 12(1) was the correct exception to apply.
 20. On 16 November 2009 the Commissioner wrote to the public authority again. Noting that the investigation had become somewhat protracted, the Commissioner outlined his view as to how the different elements of section 12 should be applied.
 21. The Commissioner now clarified that, contrary to the public authority's approach in this case, multiple requests within a single item of correspondence should be treated as separate requests for the purposes of section 12. However, the Commissioner went on to explain that under section 12(4) the estimated cost of complying with the requests may be aggregated, where the requests relate to the same or similar information. The Commissioner said that the public authority should have treated the 161 requests for information as separate requests for the purposes of section 12 and that whilst the costs of complying with the requests could have been aggregated this would only be permissible where the requests were related to the same or similar information. The Commissioner now said that he had reviewed the various requests and it was his belief that they were not all sufficiently similar for them all to be aggregated together. However he did indicate that there appeared to be groups of requests that could be seen as sufficiently similar and which could therefore be aggregated as individual categories of requests.
 22. The Commissioner noted that the public authority had, during the course of the investigation, provided the Commissioner with specific answers to some of the complainant's requests on a discretionary basis. The Commissioner now asked the public authority if it would consider making this information available to the complainant. The public authority subsequently agreed to release this information to the complainant. The Commissioner now listed the specific requests which he believed the public authority had not complied with. He suggested that the public authority consider using the categories it had identified at the internal review stage so as to group together the remaining requests which could be considered sufficiently similar. The Commissioner then invited the public authority to provide him with an estimate of the costs it expected to incur in complying with each group of requests, both in determining if it held the requested information and locating retrieving and extracting any information that was held.
 23. The public authority wrote back to the Commissioner on 31 December 2009. It disputed the Commissioner's view that multiple requests within a single item of correspondence are separate requests for the purposes of section 12. Notwithstanding this, it said that if it was obliged to treat the requests separately it

was of the view that all of the requests were sufficiently similar for the estimated costs of complying with all the requests to be aggregated under section 12(4). It also mentioned for the first time the exemptions at section 40(2) (Personal information) and section 44(2) (Prohibitions on disclosure) which it suggested applied to some of the requests.

24. On 13 January 2010 the Commissioner contacted the public authority, noting that it disputed his interpretation of section 12. Notwithstanding this, the Commissioner asked the public authority if it would be disclosing any additional information to the complainant.
25. On 1 February 2010 the public authority contacted the Commissioner again. It now confirmed that it would be disclosing additional information to the complainant on a discretionary basis, outside of the scope of the Act. The public authority wrote to the complainant on the same date providing this additional information.
26. The public authority now took the opportunity to make a new submission in response to the complaint. It now said that it believed that the complainant's requests are vexatious within the meaning of section 14(1) of the Act. It said that it believed that section 14(1) could have been applied at the refusal notice stage but that because it was confident that section 12 applied it did not formally cite section 14 at that point. The public authority then went on to contest further the Commissioner's view that the requests were not sufficiently similar for them to be aggregated under section 12(4). It also provided the Commissioner with further estimates of the costs it would reasonably expect to incur in dealing with the requests.
27. Given that the public authority had now formally cited section 14(1) for the first time, the Commissioner now contacted the complainant, on 2 February 2010, and invited her to make any additional representations on this point.

Findings of fact

28. Up to 31 March 2006 the administration of the Employment Appeals Tribunal was the responsibility of the Employment Tribunals Service, an agency of the then Department for Trade and Industry. On 1 April 2006 that responsibility passed to the Tribunals Service, an executive agency of the then Department for Constitutional Affairs which became the Ministry of Justice on 9 May 2007.
29. According to the Tribunal Service's website, the main function of the Employment Appeals Tribunal is to hear appeals from decisions made by Employment Tribunals.

Analysis

30. The full text of the relevant provisions of the Act referred to in this section is contained within Annex B.

Substantive Procedural Matters

Section 14(1) – Vexatious requests

31. The Commissioner has already said above that he believes that the public authority's approach to section 12 and particularly the issue of aggregation was flawed. However, having reviewed the requests in detail and considered the context in which they were made the Commissioner is of the view that it is more appropriate to consider, in the first instance, whether section 14(1) of the Act would apply to the complainant's requests.
32. Section 14(1) provides that a public authority is not obliged to respond to a request for information if the request is vexatious. The term 'vexatious' is not defined in the Act, and the Tribunal has therefore concluded that Parliament intended it to have the ordinary meaning i.e. likely to cause distress or irritation, literally to vex a person to whom it is directed.¹
33. The Commissioner has issued awareness guidance on what constitutes a vexatious request.² In determining whether or not requests can be deemed vexatious he will consider the context and history of the requests 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 reasonable public authority could refuse to comply with a request on the grounds that it is vexatious:
- whether compliance would create a significant burden in terms of expense and distraction
 - whether the request is designed to cause disruption or annoyance
 - whether the request has the effect of harassing the public authority or its staff
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - whether the request has any serious purpose or value
34. In this case the public authority has argued that the complainant's requests when taken together create a significant burden, distract it from its core functions and have no serious purpose or value.

Do the requests create a significant burden in terms of expense and distraction?

35. The public authority has argued that dealing with all of the complainant's 161 requests at once would impose a significant burden both in terms of expense and distraction. As part of its arguments in respect of section 12, the public authority had provided the Commissioner with an estimate of some of the costs it would reasonably expect to incur in dealing with the requests. In order to illustrate the

¹ Mr David Gowers v The Information Commissioner and London Borough of Camden [EA/2007/0114] para. 26.

²http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

significant financial burden the requests would impose it provided the Commissioner with an estimate of the costs it would expect to incur in dealing with just some of the requests. Specifically, the public authority provided an estimate of the costs it would expect to incur for the following sample of questions:

5, 5a, 25, 61, 62, 63, 64, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 117, 118, 119, 120, 121, 122, 123

36. The public authority estimated that the cost of complying with just these requests would come to £1156.25 and given the nature of the requests and the way in which material is recorded the Commissioner accepts that the public authority's estimate is reasonable in respect of these specific requests. The Commissioner has already explained that the need for requests to be sufficiently similar to be aggregated under section 12(4) means that this estimate would not have been sufficient to refuse the all of the requests under section 12. However, as regards section 14(1) of the Act, the Commissioner is satisfied that this estimate serves to demonstrate that the requests would impose a significant financial burden on the public authority.
37. It is clear, therefore, that the cost of dealing with just some of the complainant's requests would have imposed a significant financial burden on the public authority – exceeding the appropriate limit of £600 for central government departments. The Commissioner would take this opportunity to highlight that where a public authority's concerns relate only to the cost of complying with requests it will not be appropriate to apply section 14 as the Commissioner would expect a public authority, for the purposes of applying section 14, to be able to show complying with a request would impose both a significant burden both in terms of cost and diverting staff away from their core functions. However, in this case it is clear that complying with the requests in total would have such an effect. To illustrate the distraction already caused by the complainant's requests the public authority has explained that in order to establish if, and to what extent, it held information falling within the scope of the various requests it had had to consult with a number of different divisions and agencies within the public authority, namely:
- Employment Tribunal
 - Employment Appeal Tribunal
 - Office of Judicial Complaints
 - Judicial Human resources
 - Human Resource Directorate
 - The President Office
 - The Court of Appeal
 - The Judicial Studies Board
 - MoJ Headquarters Library
38. Therefore, the burden of the complainant's request is not just confined to one area of the public authority but instead impacts on a number of its business units. Given the sheer number of requests submitted by the complainant the Commissioner considers that complying with the requests would also distract the public authority from its core functions.

Do the requests have the effect of harassing the public authority or its staff?

39. For this heading the focus should be on the effect of the request(s) rather than the requester's intention. The Commissioner's awareness guidance suggests that factors to take into account under this heading include: 'the volume and frequency of correspondence; the use of hostile, abusive or offensive language; an unreasonable fixation on an individual member of staff; or mingling requests with accusations and complaints'.
40. In this case the wording of a number of the complainant's requests appear accusatory, confrontational or else seem to reflect the complainant's belief that she has not been treated properly by the Employment Appeals Tribunal. For example:
- 50). Are the judges and the lay members of the Employment Appeal Tribunal expected to comply with the European Court of Human Rights, Art 14, 1998:
- right to an independent and impartial tribunal
the right to disclosure
the right to an adversarial hearing
the right to reasons for decisions
- 90). Do the decisions of the EAT demonstrate a continuing commitment of fairness and rights in all cases with regard to industrial relations which affect employees who bring cases to the Employment Appeal Tribunal?
- 98). Do the Employment Appeal Tribunal Judges appoint themselves as the General Physicians (GPs) for appellants and respondents?
- 100). Are the Employment Appeal Tribunal Staff expected to show integrity and due diligence at all times?
41. In addition the complainant also asked a number of questions about complaints of discrimination against named members of the Employment Appeals Tribunal, whether there have been complaints of threats received by members of the Employment Appeals Tribunal and details of any judges at the Employment Appeals Tribunal being disciplined for improper conduct. The requests appear to be attempts to discredit the Employment Appeals Tribunal rather than being serious requests for recorded information. Seen in this context the Commissioner is satisfied that the requests have the effect of harassing the public authority.
42. The public authority has also informed the Commissioner that the complainant was a claimant in a case before the Employment Appeal Tribunal. As the Commissioner has already noted, many of the requests appear to reflect a belief that the Employment Appeals Tribunal has acted improperly. However, the public authority has argued that if a complainant believes that there is any maladministration due to bias there exist appropriate mechanisms for addressing such concerns without recourse to the Act. In particular, complainants may

appeal to the Court of Appeal if they believe an incorrect judicial decision has been made, or they can write to the Employment Appeals Tribunal President if they have a complaint about judicial misconduct. The public authority had initially advanced this argument to demonstrate that the requests have no serious purpose or meaning but, given the overlapping nature of the different headings, the Commissioner considers that it is equally relevant to consider this argument here. Seen in this context the Commissioner is satisfied that taken together the requests have the effect of harassing the public authority.

Are the requests obsessive or manifestly unreasonable?

43. The Commissioner considers that relevant factors to take into account under this heading include a very high volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to re-open issues that have already been considered (particularly if there has been an independent investigation).
44. In this case the complainant submitted 167 requests for information broadly relating to the Employment Appeals Tribunal. In response the public authority cited section 12 of the Act on the grounds that the cost of complying with the requests would exceed the appropriate limit. The complainant was invited to refine her requests to particular topics and to more limited time periods but instead submitted an almost identical series of requests, with the exception that 6 requests that were believed to be duplicated were removed.
45. With this in mind, and taking into account the volume and overlapping nature of the requests the Commissioner accepts that the complainant's requests can reasonably be characterised as manifestly unreasonable.

Conclusion

46. Taking into account the matters discussed under the above headings the Commissioner has decided that a reasonable public authority could refuse to comply with the complainant's requests on the grounds that they are vexatious. Consequently the Commissioner has decided that section 14 is engaged in this instance. Therefore the Commissioner does not intend to undertake a formal analysis of the public authority's application of section 12.

Other procedural matters

47. The public authority did not introduce its reliance on section 14(1) in respect of the 17 May 2006 request until 1 February 2010. This constitutes a breach of section 17(5) which provides that a public authority that is relying on a claim that section 14 applies must give the applicant a notice stating that fact within 20 working days of receiving the request.

The Decision

48. 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:
- The public authority dealt with the requests in accordance with the Act to the extent that it correctly applied section 14(1).
49. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The public authority breached section 17(5) by failing to inform the complainant of its reliance on section 14(1) within 20 working days of receiving the requests.

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 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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

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.

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 25th day of February 2010

Signed

**Jo Pedder
Senior Policy Manager**

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

Annex A – The Request

Dear Sir/Madam

Re: Information Required under Freedom of Information Act 2005

I have received the letter from the Employment Tribunal Services attached dated 3.5.2006. However, I find it hard to believe that such information as requested has not been answered as to any of the questions and indeed find it highly suspect that is the case. I also find it hard to believe that the retrieval of such data is so monotonous to provide that it would take so many hours to retrieve data even though much of the questions just require a simple answer without the retrieval of data. It is unreasonable not to have provided an answer to any of the questions that could have been within 20 working days from 5th April 2006. As such it is a breach of the FOI not to have done so. I have been specific and direct as to the information I have requested. There are a few questions that I have removed which could be a duplication and these are questions 16, 17, 18, 19, 20, 150, 151 & 152 in the letter 5.4.2006 (attached). The Employment Tribunal Service are already out of time in responding to questions they could have responded to. I have been direct and specific in my question formulation and therefore to dissect further is impeding, suppression of information and defensive from the ETS establishment on my enquiries.

The questions are now only slightly reduced as are the following:

- 1) Does the Employment Appeal Tribunal provide training to Judges on anti-discrimination awareness ?
- 2) If, anti-discrimination awareness training is provided, which organisation are on the approved list of trainers to provide this training ?
- 3) If, anti-discrimination awareness training is provided, when was the last set of training dates ?
- 4) How many female Judges have adjudicated cases at the Employment Appeal Tribunal between September 2005 until present ?

- 5) If any female Judges have adjudicated at the Employment Appeal Tribunal during the period of Sept 2005 , what are their names ?
- 5a) What were the number of female Judges who have adjudicated at the Employment Appeal Tribunal from March 2005 to March 2006 in comparison to the number of male Judges ?
- 6) Are All Judges and lay-members provided with and expected to comply with the Commission for Racial Equality Code of Practice ?
- 7) Are All Judges and lay-members provided with and expected to comply with the Equal Opportunities Commission Code of Practice ?
- 8) Does the Employment Appeals Tribunal have an Equal Opportunities Policy currently in force which caters for staff and service users ?
- 9) If so, how long has this Equal Opportunities Policy been in force ?
- 10) If there is an Equal Opportunities Policy currently in force, can copies be provided ?
- 11) If there is an Equal Opportunities Policy currently in force, are Judges and lay-members trained to abide by such Equal Opportunities Policies ?
- 12) Does the current Employment Appeal Tribunal Practice Direction have an Equal Opportunities Policy Statement incorporated within it and an ethnic monitoring questionnaire incorporated within it containing the Commission for Racial Equality ethnic groups ?
- 13) Does the Notice of Appeal 'Form 1' contain an ethnic monitoring questionnaire and an equal opportunities statement incorporated within it containing the Commission for Racial Equality ethnic groups ?
- 14) Is there a Race Relations Liaison Officer within the Employment Appeals Tribunal Service ?
- 15) Are Judges and lay-members provided with sexual harassment awareness training ?
- 16) If sexual harassment awareness training is provided, which organisations are on the approved list of trainers to provide this training ?
- 17) If sexual harassment awareness training is provided, what were the last set of training dates ?
- 18) Are Judges and lay-members provided with racial harassment awareness training ?
- 19) If racial harassment awareness training is provided, which organisation are on the approved list of trainers to provide this training ?
- 20) If racial harassment awareness training is provided, what were the last set of training dates ?

- 21) Is there an sexual harassment policy within the Employment Appeal Tribunal Service ?
- 22) If there is an sexual harassment policy within the Employment Appeal Tribunal Service, what effects the invoking of an investigation ?
- 23) Is there a racial harassment policy within the Employment Appeal Tribunal Service ?
- 24) If there is a racial harassment policy within the Employment Appeal Tribunal Service, what effects the invoking of an investigation ?
- 25) How Many minority ethnic Judges have adjudicated at the Employment Appeal Tribunal during the last 12 months back to April 2005 ?
- 26) Is there a procedure in the Employment Appeal Tribunal for Judges and lay-members who are being investigated for fraud, corruption ?
- 27) If there is a fraud/corruption procedure, can this be sent to me ?
- 28) What training has been given to Judges and lay-members on the European Court of Human Rights Act 1998 ?
- 29) If training is given on the European Court of Human Rights Act 1998, how many training days were allocated for this since 1998 ?
- 30)When applying for a position as a Judge and lay-member to adjudicate at the Employment Appeal Tribunal, are there procedures in place for declaration of membership of an organisation which that potential Judge/lay-member is a member of ?
- 31) Is there procedural guidance given to Judges/lay-members on organisations which they may become a member of or are a member of which may have a conflict for delivering service equality across a wide social group in particular the minority ethnic community ?
- 32) Do any of the Judges who adjudicate at the Employment Appeal Tribunal have Union position backgrounds ?
- 33) If these Judges have Union position backgrounds, can you name them ?
- 34) Have any of the Judges/lay-members who adjudicate at the Employment Appeal Tribunal in the last 7 years, written any books on the law in relation to discrimination, employment rights and employment protection ?
- 35) If, so what are the names of these Judges ?
- 36) Has the Employment Appeal Tribunal Service set up a panel as a working group incorporating members of the public to explore best practice of service delivery ?
- 37) If so, could you please send me the constitution document ?
- 38) Does the Employment Appeal Tribunal Service Lay-members and Judges refer to the maintaining of good race relations from the McPherson Enquiry arising out of the racial murder of Stephen Lawrence?

- 39) Are Judges and Lay- members of the Employment Appeal Tribunal required (mandatory) to declare which institutions they belong to as a member in case of conflict of interest ?
- 40) Have any Judges or lay-members of the Employment Appeal Tribunal been told to sever connections within the last 7 years with an organisation where a conflict of interest arises which affected public interest ?
- 41) What action does the Employment Appeal Tribunal take against Judges and Lay-members who refuse to sever membership of such institutions which could cause an adverse conflict of interest with their duties affecting the community they serve ?
- 42) Do Employment Appeal Tribunal Judges receive regular appraisals ?
- 43) If so, who would be responsible for holding these appraisals with the Judges ?
- 44) If so, how often are these appraisals held ?
- 45) Are Employment Tribunal Judges and lay-members required to observe and follow the Employment Appeal Practice Directions and documents which relate to the practice directions at all times ?
- 46) Are Employment Tribunal staff required to observe and follow the Employment Appeal Practice Directions and documents which relate to the practice directions at all times ?
- 47) How often does the Employment Appeal Judges role description change ?
- 48) How often does the Employment Appeal lay-members role description change ?
- 49) Is there a procedure in place for Judges and lay-members to sign for hospitalities and gifts received within their role ?
- 50) Are the Judges & lay-members of the Employment Appeal Tribunal expected to comply with the European Court of Human Rights, Art 6, 1998;
- right to an independent and impartial tribunal
the right to disclosure
the right to an adversarial hearing
the right to reasons for decisions
- 51) Are the Judges and the lay-members of the Employment Appeal Tribunal expected to comply with the European Court of Human Rights, Art 14, 1998;
- 52) Are the Judges and the lay-members of the Employment Appeal Tribunal expected to comply with the European Court of Human Rights, Art 8, 1998;
- 53) Are the Judges and the lay-members of the Employment Appeal Tribunal expected to comply with the European Court of Human Rights, Art 10, 1998;
- 54) Are the Judges and the lay-members of the Employment Appeal Tribunal expected to comply with the European Court of Human Rights, Art 3, 1998;

- 55) Are the Judges and the lay-members of the Employment Appeal Tribunal expected to comply with the European Court of Human Rights, Art 9, 1998;
- 56) Are the Judges of the Employment Appeal Tribunal and the Lay-members required to comply with the maintaining of good industrial relations with the resultant effect that employees are treated with fairness and dignity on the presentation of their cases ?
- 57) Is the EAT bound by it's own decisions ?
- 58) Is the EAT bound by decisions in the Court of Appeal ?
- 59) Is the EAT bound by decisions in the House of Lords ?
- 60) Does the EAT ever apply the ACAS Code of Practice in their adjudication ?
- 61) How many cases citing grounds of appeal on race discrimination went straight to a full hearing without going through a 3 (10) hearing between the individual months from January 2001 to April 2006 ?
- 62) How many cases citing grounds of appeal on sex discrimination went straight to a full hearing without going through a 3 (10) hearing between the individual months from January 2001 to April 2006 ?
- 63) How many cases citing grounds of appeal on race discrimination went straight to full hearing without going through a preliminary hearing between the individual months from January 2001 to April 2006 ?
- 64) How many cases citing grounds of appeal on sex discrimination went straight to full hearing without going through a preliminary hearing between the individual months from January 2001 to April 2006?
- 65) Does the EAT practice consistency in the provision of giving information to both respondent and appellant in an equitable judicial process ensuring there is equal footing and impartiality ?
- 66) Does the EAT practice consistency in the following of the EAT practice directions for both respondent and appellant in an equitable judicial process ensuring there is equal footing and impartiality ?
- 67) Do all the decisions the EAT reflect excellence in race relations for Under-represented and disadvantaged communities ?
- 68) Has the EAT received any complaints from any number of service users reflecting racism within the EAT within the last 7 years ?
- 69) Are these complaints in relation to a non compliance of the statutory requirements of the Race Relations Act 1976 and as amended ?
- 70) Has the EAT received any complaints from any number of service users reflecting sexism within the EAT within the last 7 years ?
- 71) Are these complaints in relation to a non compliance of the statutory requirements of the sex discrimination act 1975 ?

- 72) Can you advise how many cases came to the EAT by way of Commission for Racial Equality representation for an appellant from Jan 2001 to present day ?
- 73) Can you advise how many cases came to the EAT by way of Commission for Racial Equality representation for an respondent from Jan 2001 to present day ?
- 74) Can you advise how many cases came to the EAT by way of Equal Opportunities Commission representation for an appellant from Jan 2001 to present day ?
- 75) Can you advise how many cases came to the EAT by way of Equal Opportunities Commission representation for an respondent from Jan 2001 to present day ?
- 76) Can you advise how many cases were actually heard at the EAT by way of Commission for Racial Equality representation for an appellant from Jan 2001 to present day ?
- 77) Can you advise how many cases were actually heard at the EAT by way of Commission for Racial Equality representation for an respondent from Jan 2001 to present day ?
- 78) Can you advise how many cases were actually heard at the EAT by way of Commission for Equal Opportunities Commission for an appellant from Jan 2001 to present day ?
- 79) Can you advise how many cases were actually heard at the EAT by way of Commission for Equal Opportunities Commission for an respondent from Jan 2001 to present day ?
- 80) How many race discrimination cases were brought for adjudication at the EAT from Jan 2001 to present day ?
- 81) How many race discrimination cases were actually heard for adjudication at the EAT from Jan 2001 to present day ?
- 82) How many sex discrimination cases were brought to for adjudication at the EAT from Jan 2001 to present day ?
- 83) How many sex discrimination cases were actually heard for adjudication at the EAT from Jan 2001 to present day ?
- 84) What does the Job induction process consist of for the Listing Officer ?
- 85) How many training days per annum are set for the Listing Officer of the EAT ?
- 86) What does the job induction process consist of for staff who correspond on behalf of the EAT Registrar ?
- 87) How many training days per annum are set for the staff who correspond on behalf of the Registrar ?
- 88) Has the EAT received complaints within the last year with regard to the conduct of the EAT towards minority ethnic appellants in the conduct of the proceedings ?

How many were these ?

What were their ethnic origins ?

89) Has the EAT received complaints within the last year with regard to the conduct of the EAT towards minority ethnic respondents in the conduct of the proceedings ?

How many were these ?

What were their ethnic origins ?

90) Do the decisions of the EAT demonstrate a continuing commitment of fairness and rights in all cases with regard to Industrial relations which affect employees who bring cases to the Employment Appeal Tribunal ?

91) Does the Practice Direction 12.4 specifically state a compelling reason OR any reason should be given for the reason for a specific date of a case to be heard ?

92) Has there been non compliance of the EAT on the Data Protection Act 1998 contravention from year 2000 - 2006 ?

93) Has there been non compliance by the EAT of the Freedom of Information Act from January 2005 to present date ?

94) How many briefings on Tribunal Reform has Judge McMullen attended either chaired or not chaired by Sir Andrew Leggatt ?

95)) How many briefings on Tribunal Reform has Judge McMullen attended not chaired by Sir Andrew Leggatt ?

96) How many briefings has Judge McMullen attended with regard to **Access to Justice 1999** ?

97) Is Judge McMullen expected not to contravene the rights of individual's under **Access to Justice 1999** ?

98) Do the Employment Appeal Tribunal Judges appoint themselves as the General Physicians (GPs) for appellants and respondents ?

99)) Are the Tribunal Judges and laymembers expected to show integrity and due diligence at all times ?

100) Are the Employment Appeal Tribunal staff expected to show integrity and due diligence at all times ?

101) Under which circumstances, are Employment Appeal Tribunal Judges expected to recuse themselves from the hearing they undertake ?

102) Under which circumstances are laymembers expected to recuse themselves from the hearing they undertake ?

103) Are Judges expected to have integrity & diligence where they will ensure they do not associate themselves with the Theft Act 1968, 1978, (Theft Act 1996 as amended) and the Fraud Acts at the time ?

- 104) Are Judges expected to adjudicate cases that do not contravene an individual's rights by placing them in a position of being a victim of the Theft Act 1968, 1978, (Theft Act 1996 as amended) and Fraud Act ?
- 105) Are Judges expected to adjudicate cases that do not contravene an individual's rights to place them in a position of being a victim of perjury ?
- 106) Have there been any cases from year 2001 to present day appealed from the Employment Tribunal to the Employment Appeal Tribunal on breaches of the Tribunal Cost Rules resulting in pecuniary advantage to any party under the Theft Act 1998 s16 1978 and/or Theft Act s15 1968 ?
- 107) Are Judges expected to adjudicate cases explaining to litigants of exactly why the case has no prospects of success ?
- 108) Are Judges expected to instruct other Courts not to hear a litigant's case by specifying the reason that they are not represented thereby denying Access to Justice 1999 / Article 6, ECHR 1998 ?
- 109) Has Judge McMullen ever been accused of racism by any member of the public since sitting at the EAT ?
- 110) If so, how many times has this accusation been made ?
- 111) When were these accusations made ?
- 112) How many by barrister chambers ?
- 113) How many Solicitor firms
- 114) How many by individuals ?
- 115) How many by religious establishments ?
- 116) How many by other companies ?
- 117) Have any complaints come via the Employment Appeal Tribunal of race discrimination said to have been caused by Chairman Michael Zuke ?
- 118) If so, how many times were these accusations made ?
- 119) When were these accusations made ?
- 120) How many by barrister chambers ?
- 121) How many by Solicitor firms ?
- 122) How many by individuals ?
- 123) How many by religious establishments
- 124) Does the EAT comply with the statutory Data Protection Act 1998
- 125) Does the EAT comply with the statutory Freedom of Information Act 2005

126) Does the EAT acknowledge the dates of correspondence from the service users who send correspondence by means of i.e. fax, email, recorded delivery, special delivery, registered post, delivery of correspondence in person ?

127) Have there been complaints about threats from the EAT from service users in the years 2001, 2002, 2003, 2004 and 2005 ?

128) What did these threats encompass ?

129) What were the dates of these threats ?

130) How many Judges at the EAT have been disciplined for improper conduct from years 2000 - 2006

131) What was the reason for the discipline misconduct action taken?

132) How many Judges at the EAT have been disciplined for improper conduct since the existence of the EAT ?

133) What was the reason for the discipline misconduct action taken ?

134) Has any Judge been relieved of his/her duty by way of being dismissed for improper conduct since the existence of the EAT ?

135) What was the reason for the relieving of duties by way of dismissal ?

136) What is the time-scale for acknowledging letters sent into the Employment Appeal Tribunal ?

137) What is the time-scale for giving a full response to correspondence sent into the Employment Appeal Tribunal ?

138) What compensatory measure is given to members of the public who are discriminated against in the Employment Appeal Tribunal by the EAT itself ?

139) Could you send me the procedure on these compensatory measures if they exist ?

140) It is the EATs practice to ignore letters from members of the public without acknowledging or giving a full response ?

141) When the EAT adjudicate cases from the Employment Tribunal are no findings of fact upon which a decision has come to be made, an error of law ?

142) If so, is this from Common Law or Parliament or either ?

143) When the EAT adjudicate cases from the Employment Tribunal, is adducing of evidence by the Employment Tribunal where there are no facts, an error of law ?

144) If so, is this from Common Law and Parliament or either ?

145) Does the Employment Appeal Tribunal have a separate bullying and harassment procedure ?

- 146) If so, can this be sent to me ?
- 147) What is the current retirement age of a Judge in the EAT ?
- 148) Does the EAT have any designated prayer rooms for staff who follow their religion ?
- 149) Does the EAT have a policy of allowing staff to take religious celebratory days off without using their annual leave ?
- 150) Can this policy be sent to me ?
- 151) What is the maternity policy within the EAT ?
- 152) Can this be sent to me ?
- 153) What is the paternity policy within the EAT ?
- 154) Can this be sent to me ?
- 155) How long does an EAT Judge have to hold that position before sitting at the Court of Appeal ?
- 156) Do EAT Judges have to attend meetings with Court of Appeal Judges for the delivery of better services and for procedural matters, case clarification and legal reforms ?
- 157) Do EAT Judges have to communicate without meeting other Judges of the Court of appeal for the delivery of better services and for procedural matters, case clarification and legal reforms ?
- 158) Why do Judges from the EAT also sit at the Court of Appeal ?
- 159) Are there any 'potential' conflicts of interest likely for Judges who sit at the EAT and then at the Court of Appeal , considering the Alconbury authority and the Lawal v Northern Spirit Authority ?
- 160) How many sitting days at the Court of Appeal are EAT Judges expected to perform yearly ?
- 161) What are credentials required for a Judge before he/she can sit at the EAT ?

Annex B – Sections of the Act

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 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”

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”