

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 March 2010

Public Authority: The British Council
Address: 10 Spring Gardens
London
SW1A 2BN

Summary

The complainant requested information from the British Council relating to the Council's sponsorship of students on English language courses in Libya. The Council refused the request under sections 12 and 14 of the Act. The Commissioner found that the Council had acted correctly in refusing the request under section 12 as the appropriate cost limit would have been exceeded. The Council was not correct to apply section 14 to the request. The Commissioner also found that the Council had breached sections 17(5) and 17(7) 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.

Background

2. The British Council (the Council) is a non-departmental public body which specialises in international educational and cultural opportunities. These include the sponsorship of students on English language courses at various British Council Teaching Centres. The complainant in this case has made several previous requests to the Council in relation to these sponsorships. Those requests are the subject of a separate Decision Notice. This Decision Notice deals only

with the complainant's request of 18 June 2007 regarding the Council in Tripoli, Libya's sponsorship of students on English language courses at the Teaching Centre in Tripoli, as detailed below.

The Request

3. On 18 June 2007 the complainant made the following request for information to the Council:

"I am requesting information related to classes run, and the sponsorship of students by the British Council, Tripoli, Libya during Terms 3 (April/May 2007) and 4 (June/July 2007).

Please provide me with a list of all classes run by the Teaching Centre during each term. As well as regular timetabled classes this should include all onsite and offsite classes, whether timetabled or one-off, and specialist classes such as one-to-one tuition etc. Details should include the class ID (e.g. ST-MW1835), class category (e.g. general English, business English etc.), academic level (e.g. elementary, pre-intermediate 1 etc), student age range (e.g. adult, senior Young Learner etc.) and number of students attending each class.

With respect to the sponsorship of students, for each term please provide details of all students sponsored by the British Council. For each sponsored student please include the class attended and the justification for sponsoring the student. I also wish to see copies of information recording:

- 1) that a particular student was sponsored
- 2) the justification for sponsoring that student
- 3) the transfer of funds to the Teaching Centre to pay for the course fees
- 4) any other information relating to the sponsorship of the student.

This information should include, but not be restricted to, that kept for audit purposes. Please provide copies of material held in the form of paper and electronic records including emails."

4. The complainant contacted the Council on 26 June and 3 July 2007 as he had not received any acknowledgement of his request. The Council contacted him on 6 July 2007 to assure him that his request had been received and would be responded to within the 20 working day time limit as set out in the Act.

5. On 12 July 2007 the Council issued a refusal notice to the complainant. That notice stated that the complainant had made earlier related requests for information, to which the Council had already provided a response and these, when aggregated with this current request, would "far exceed" the cost limit of £450 as set out in section 12 of the Act.
6. The refusal notice further stated that the Council found the complainant's requests to be vexatious, as the Council believed that they were designed primarily to cause nuisance.
7. The complainant requested a review of the Council's decision on 14 July 2007. On 17 July 2007 the Council wrote to the complainant stating that it was refusing to carry out an internal review of its original decision, on the grounds set out in its original refusal notice. It also stated that it was not prepared to respond to any further enquiries from the complainant which related to English language classes run through the teaching centre in Tripoli or the sponsorship of students at that centre.

The Investigation

Scope of the case

8. On 22 July 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The Council's refusal to conduct an internal review of its decision.
 - The Council's application of the costs limit as set out in section 12 of the Act.
 - The Council's statement that the requests were "vexatious".
 - The Council's failure to confirm or deny whether it held the requested information.
 - The Council's failure to outline the appeals procedure, including the right of appeal to the Commissioner

Chronology

9. Regrettably the Commissioner was unable to commence his investigation in this case until August 2008, owing to the large volume of complaints under consideration.

10. On 21 August 2008 the Commissioner wrote to the Council requesting further information on its application of sections 12 and 14 of the Act.
11. Following a series of clarifications, the Commissioner received a response to his enquiries on 20 January 2009.
12. Between 3 and 4 April 2009 the Commissioner and the complainant discussed the Council's application of section 12 of the Act.
13. On 11 May 2009 the Commissioner contacted the Council with further enquiries.
14. On 8 September 2009 the Commissioner's staff met with Council staff. During that meeting the possibility of informal resolution was discussed. Following this meeting the Commissioner explored this possibility with the complainant; however the complainant remained dissatisfied and asked that the Commissioner make a formal decision in the case.

Analysis

Substantive Procedural Matters

Substantive procedural matters

Section 14 – vexatious or repeated requests

15. Section 14(1) of the Act provides that: -

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

16. The Council's refusal notice dated 12 July 2007 stated that the Council considered the complainant's request to be "vexatious". The Council explained its view that, whether intended by the complainant or not, the volume and nature of the complainant's requests impacted upon the BC by diverting resources away from answering other requests made under the Act. The Commissioner has considered the test he has set out in awareness guidance 22 on section 14:
 - Can the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?

17. Having considered the circumstances of the case the Commissioner finds that the requests can be characterised as persistent but they do not meet the threshold to be classed as vexatious. The Commissioner's approach to section 14 is set out in awareness guidance 22¹; if the main concern is the cost of compliance, the Commissioner recommends that public authorities should first consider section 12 rather than section 14. It is unlikely that burden alone would be justification for relying on section 14 but this factor in combination with others may justify reliance. The Commissioner has considered the Council's application section 12 below. The requests and correspondence show the complainant was starting to become obsessive in pursuing the request but the complainant was pursuing an issue of legitimate concern and, to some extent, the Council's handling of his requests contributed to the pattern of requests that emerged. The Commissioner therefore finds that the Council was incorrect to rely on section 14.

Section 1(1)(a)

18. Section 1(1) of the Act states 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."

19. In the Act, the duty of a public authority to comply with section 1(1)(a) of the Act is referred to as "the duty to confirm or deny".
20. The complainant, in his initial letter to the Commissioner, asked the Commissioner to investigate the Council's failure to confirm or deny whether it held the requested information.
21. In so far as procedural grounds are concerned, if a public authority chooses to rely upon section 12 as a reason not to disclose information in response to a request, it must determine whether a search for the information would exceed the cost limit as set out in the Fees Regulations. Section 12(2) does not exempt the public authority from its obligation to confirm or deny whether it holds the

1

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

requested information unless the cost of complying with that paragraph alone would exceed the appropriate limit. However, it should still consider providing advice and assistance in order to help the requestor narrow or refine their request.

22. However, the Commissioner is of the view the Council was aware at the time of the request that it held the information relevant to the request.
23. In light of the above, the Commissioner concludes that the Council was in a position to confirm or deny whether it held the information and its failure to do so was in breach of section 1(1)(a) of the Act.

Section 12 - cost limit

24. Section 12(1) of the Act states:

"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."

25. The appropriate limit (the cost limit) is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations), the wording of which is set out in the Legal Annex to this Notice. A public authority, when calculating the cost of providing any requested information may only take into account the cost of determining whether it holds the requested information, locating, retrieving and extracting that information. The cost limit is currently set at £450 for all public authorities (other than central government) and equates to 2.5 days' (18 hours) work at a rate of £25 per hour.
26. Regulation 5(2) also allows for the aggregation of the costs of complying with two or more related requests where these relate to the same or similar information and are received by the public authority within any period of sixty consecutive working days.
27. The Council advised the complainant in its refusal notice that, "your request of 18 June 2007 is related to your various earlier requests (received between January and May 2007) for information which relates to the sponsorship of students at the Teaching Centre in BC Tripoli, the costs of which have already far exceeded the cost level allowed of £450".
28. The Commissioner does not consider that it is appropriate to aggregate the complainant's request of 18 June 2007 with his earlier requests. This is because, although the earlier requests relate to

similar information, the last request was made on 17 February 2007, which was more than sixty consecutive working days prior to the request of 18 June 2007.

29. The Commissioner notes that within the request of 18 June 2007, the complainant made a number of requests. Section 12(4) of the Act provides that, in certain circumstances, requests can be aggregated so that 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. Regulation 5 of the Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Having considered the requests in this case the Commissioner is satisfied that they all relate to sponsorship of students on English language courses, and can therefore be aggregated.
30. Regulation 4(3) states that, for the purposes of the cost estimate a public authority may take account of the following activities estimated at a rate of £25.00 per person per hour:
- (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.
31. The issue of what constitutes a reasonable estimate was considered by the Information Tribunal in the case of Roberts². The Commissioner has taken into account the Tribunal's approach as set out in paragraphs 9 -13 of the decision:
- "Only an estimate is required" (i.e. not a precise calculation)
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3)
 - Time spent considering exemptions or redactions cannot be taken into account
 - Estimates cannot take into account the costs relating to data validation or communication
 - The determination of a reasonable estimate can only be considered on a case-by-case basis and
 - Any estimate should be "sensible, realistic and supported by cogent evidence".

²EA/2008/0050

32. The Tribunal went on to suggest that producing an estimate requires a process of both investigation and assessment/calculation. At paragraph 12, the Tribunal said:
- “...The investigation will need to cover matters such as the amount of information covered by the request, its location, and the hourly rate of those who have the task of extracting it. The second stage will involve making an informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information...”
33. The Council has not provided the Commissioner with an estimate/calculation showing how the cost of the activities required in extracting the requested information would exceed the cost limit. However, the Commissioner notes in this particular case that the request for information has been the subject of several similar requests made by the complainant. The Commissioner accepts that retrieval of the requested information would involve similar estimates/calculations as outlined by the Council in its letter to the Commissioner dated 1 September 2008 in which the Council had advised it would be a “a major exercise involving a number of staff who would have to manually check hardcopy records of every registration since the opening of the Teaching Centre.”
34. The Commissioner has considered the Council’s explanation that a manual check of 520 student records for each of two terms at the rate of two minutes per file would equate to approximately 34 hours of work (520 students multiplied by two minutes for each file per student per term = 2080 minutes= 34.6 hours).
35. The Commissioner finds that the Council’s explanation is reasonable, and that the estimate, although provided for previous similar requests made by the complainant, is also reasonable for this request. The Commissioner therefore accepts that, for the purposes of regulation 4(3)(c), the cost alone of retrieving information from student files in Libya in order to respond to the applicant’s request would meet the 18 hour time limit for the purposes of section 12(1).
36. Having considered the above information, the Commissioner is satisfied that section 12(1) is engaged.

Section 16 – Duty to provide advice and assistance

37. Section 16(1) of the Act provides an obligation for a public authority to provide advice and assistance to persons who make a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16

duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.

38. The Commissioner is satisfied that in this case the Council was unable to provide the complainant with the advice and assistance necessary to narrow his request. The broad thrust of the complainant's request relates to classes run and the sponsorship of students by the British Council in Libya. The Council has provided the Commissioner with evidence to indicate the exercise of retrieving that information alone for two terms would exceed the appropriate limit of £450.

Section 17 – refusal of request

39. Section 17(5) states 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."

Section 17(7) further states that:-

"A notice under subsection (1), (3) or (5) must—

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

40. The Council informed the complainant in its refusal notice dated 12 July 2007 that it was relying on sections 12 and 14 of the Act as a basis for non-disclosure of the requested information. However the Council, rather than citing section 12, simply described that section. The Commissioner considers that public authorities must explain clearly the provisions of the Act on which they rely to refuse a request, and the Council failed to do so in this case. Therefore, the Commissioner finds that the Council's refusal notice did not comply with the requirements of section 17(5), as set out above.
41. In addition, the Council failed to provide the complainant with details of its appeals procedure and the complainant's right, under section 50 of the Act, to apply to the Commissioner for a decision as to whether his request for information had been dealt with in accordance with the Act. The Commissioner therefore finds that the Council breached section 17(7) of the Act by not providing those details.

The Decision

42. 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 Council correctly relied upon the cost limit as outlined by section 12 of the Act as a basis for refusal to disclose the requested information.
43. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The Council breached section 1(1)(a) of the Act as it failed to confirm or deny it held the requested information.
 - The Council breached section 17(5) of the Act as it failed to specify the section 12 exemption in its refusal notice.
 - The Council breached section 17(7) of the Act as it failed to provide the complainant with particulars of its appeals procedure or of the complainant's right to apply to the Commissioner for a decision under section 50 of the Act.

Steps Required

44. The Commissioner requires no steps to be taken.

Other matters

45. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
46. The complainant asked the Commissioner to consider the fact that the Council refused to carry out an internal review of its decision not to provide the complainant with the requested information. The Act does not specify that an internal review must be carried out, however non-statutory guidance is given in the Code of Practice issued by the Secretary of State under section 45 of the Act. This contains the following statement:

"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as possible. They should encourage a prompt determination of the complaint."

47. The Commissioner enquired, during the course of his investigation, why an internal review of the Council's original decision had not been carried out. The Council stated that, given the fact that the request had been deemed to be vexatious, any decision to conduct an internal review would have meant acceding to the vexatious nature of the request and thereby undermining the Council's rationale for its application of section 14 to the request.
48. The Commissioner accepts that this reasoning is valid and remains so even though he considers that section 14(1) was applied incorrectly by the Council.

Right of Appeal

49. 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 9th day of March 2010

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 1 - general right of access

(1) 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 - Exemption where cost of compliance exceeds appropriate limit

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 to be estimated.

14 Vexatious or repeated requests

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

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Section 16 – Duty to provide advice and assistance

(1) 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.

(2) 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.

Section 17 - Refusal of request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
 - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant,

the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet

been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) 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.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,
(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to
serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

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

The appropriate limit

3. (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

Estimating the cost of complying with a request - general

4. - (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[3], 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.

Estimating the cost of complying with a request - aggregation of related requests

5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, 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 total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and
- (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.