

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 25 May 2010**

**Public Authority:** Her Majesty's Revenue and Customs (HMRC)  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

### Summary

---

The complainant referred two requests for information to the Commissioner that concern HMRC's policies on capital gains tax and specific information about the sale of a property in 2004. The public authority responded to each request individually and stated that it believed that they were vexatious and that section 14(1) applied. It conducted a single internal review in relation to these two requests (and a third request) and confirmed its position. The Commissioner investigated and found that the public authority did not provide sufficient evidence for section 14(1) of the Act to be engaged in relation to these two requests. For each of the two requests, the public authority is required to confirm or deny to the complainant if the information requested is held and either disclose this information to the complainant or provide him with a valid refusal notice in accordance with the requirements of section 17(1) of the Act. It is required to do this within 35 calendar days.

### 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 complainant is a former employee of the public authority. He worked in the particular business team that processed claims for lodging allowances.
3. At the time of his departure, he submitted a grievance about three senior managers and his requests were to obtain evidence to further his understanding about the issues that he has raised. The grievance was submitted in April 2004 and the report providing an outcome was issued in June 2006. It did not uphold the complaint.

## The Requests

---

4. The Commissioner and the complainant limited the Commissioner's consideration to the handling of just two requests for information. These had the public authority's references 1471/08 and 1472/08.

### *Request 1 (1471/08)*

5. On 16 May 2008 the complainant asked for the following information in accordance with section 1(1) of the Act:

*'Any recorded information (rather than comment) HMRC holds in relation to this request [this was a reference to previous correspondence dated 19 July 2007 in which the complainant asked the public authority about the rules and guidance governing the tax liability of lodging allowance claimed by employees and used to purchase residential property at a detached duty station], but including HMRC's policy and practice in regard to whether tax is payable, or not, on subsistence payments (including lodging allowances) used to purchase an additional property at the detached duty station of the claimant'*

6. On 16 June 2008 the public authority issued a response. It stated that it believed that the request was vexatious and that section 14(1) applied to it. It stated that it had come to this verdict due to the volume of requests on similar matters and its belief that the complainant was intending to disrupt its normal course of business.

### *Request 2 (1472/08)*

7. Also on 16 May 2008 the complainant also requested the following information (in relation to the sale of a property for £214k in February

2004):

- *Who valued the property, and what price did they recommend the property be put on the market for, and in what proportions was the sale price divided between HMRC and the employee (or former employee) concerned.*
  - *Was the property purchased by a member, or a former member, of HMRC, or the former Inland Revenue, or a relative, or anyone acting on their behalf.*
  - *What capital gains tax was paid on the liability arising from the proceeds of the sale, and in what proportions was that liability shared between the employee (or former employee) and HMRC.*
8. On 16 June 2008 the public authority responded, it informed the complainant that it felt that this request was vexatious and that it was applying section 14(1). It stated that it had come to this verdict due to the volume of requests it had received.
9. On 14 October 2008 the public authority conducted an internal review into the handling of these two requests (and a third request) in one piece of correspondence. It upheld its position. It informed the complainant that it felt that the multiple requests that it received constituted a significant burden in terms of expense and distraction. It also stated that it believed that all the requests were directed against a small number of individuals. It finally stated that it felt that the requests were obsessive and had the effect of harassing it.

## The Investigation

---

### Scope of the case

10. On 30 April 2009 the complainant contacted the Commissioner. He asked for the Commissioner to consider three requests that were made on 16 May 2008. He specifically asked the Commissioner to consider the following points:
- That in his view these particular requests were not vexatious.
  - That for two requests the public authority asked him to clarify earlier requests, only to later apply section 14(1) to them. This inconsistent approach shows that he was not vexatious.

- That it is in the public interest that these requests are responded to and that arguments about public interest are becoming increasingly compelling.
11. On 9 December 2009 the complainant agreed that the scope of this investigation was to be limited to the two requests above and would be as follows:
- To determine whether or not the public authority can rely on section 14(1) in respect to the two information requests above (both dated 16 May 2008).

## **Chronology**

12. On 20 August 2009 the Commissioner wrote to the complainant. He provided an appraisal of the relevant correspondence and explained the scope of his investigation. He also asked for further arguments about why the complainant believed that these specific requests were not vexatious.
13. On 8 September 2009 the complainant agreed to the scope of the investigation, but asked for more time to present his arguments. Having heard nothing further, the Commissioner telephoned the complainant on 21 September 2009. He explained the sort of arguments that were necessary and agreed to wait for those arguments to be composed.
14. On 28 September 2009 the complainant presented his arguments. He explained that he contested the conclusions reached in the internal review. He explained that he found the verdict grossly offensive. He explained that he believed that the questions were in the public interest and were to ensure accountability and to be certain whether or not the public authority was responsible for gross wrongdoing. He stated that the public authority's responses had been inadequate and threatening. He explained that he had also explored the whistle blowing process and that this proved inadequate and that he believed that these requests were reasonable. He explained that he had considerable evidence that could be provided to the Commissioner on request, but asked the Commissioner to call him so that he could understand what would be seen as relevant.
15. On 28 September 2009 the Commissioner telephoned the complainant to explain that he required evidence that was relevant to the specific requests and that he would prefer to have additional evidence rather than too little. The complainant agreed to provide this further evidence and confirmed in an email that he would do so.

16. On 2 October 2009 the complainant presented the further documentation to the Commissioner, explaining that the matters concerned were very serious as were his intentions. He provided the Commissioner with a key to the documentation. On 6 October 2009 the Commissioner acknowledged receipt and confirmed that he was limited to seeing if the request was vexatious within the meaning of his legislation.
17. On 12 October 2009 the Commissioner wrote detailed enquiries to the public authority about its handling of the two requests (and the third request it had considered in its internal review). He structured his enquiries in line with his guidance and included issues raised in the correspondence by the complainant.
18. On 9 November 2009 the Commissioner received a response to his enquiries. It provided a chronology of all the previous correspondence alongside further arguments about why it felt this request was vexatious. It also provided the Commissioner with the submission provided to those who conducted its internal review, explained that such a declaration requires senior input and answered the other specific enquiries made.
19. On 10 November 2009 the Commissioner spoke to the complainant on the telephone. The complainant confirmed that he wished for the case to progress and the Commissioner consolidated what was said in an email. He also explained how this Notice would be issued and could then be appealed.
20. On 8 December 2009 the complainant submitted further evidence for the Commissioner to take into account. This evidence focussed particularly on why the serious purpose of his requests should outweigh the other factors in his vexatious determination. The Commissioner acknowledged receiving these arguments on the same day. On 9 December 2009 the complainant also agreed to limit this case to only the two requests being considered above.

### **Findings of fact**

21. There have been twenty seven requests for information received by the public authority from the complainant between 20 March 2007 and 16 May 2008 (the date of the two requests that are the subject of this investigation). The requests on the same day were made about different subjects and could correctly be regarded as separate requests.

The requests were received on:

- 20 March 2007 (Public authority reference 1265/07).
- 29 March 2007 (1267/07).
- 29 March 2007 (1268/07).
- 29 March 2007 (1269/07).
- 29 March 2007 (1270/07).
- 30 March 2007 (1278/07).
- 30 March 2007 (1279/07).
- 30 March 2007 (1280/07).
- 25 May 2007 (1467/07).
- 25 May 2007 (1469/07 and 1472/07).
- 22 June 2007 (1578/07).
- 10 July 2007 (1635/07).
- 19 July 2007 (1699/07).
- 19 July 2007 (1712/07).
- 15 August 2007 (1792/07).
- 15 August 2007 (1793/07).
- 12 September 2007 (1884/07).
- 7 November 2007 (2032/07).
- 7 November 2007 (1036/08).
- 19 December 2007 (2235/07).
- 6 February 2008 (1110/08).
- 6 February 2008 (1131/08).
- 17 March 2008 (1252/08).
- 17 March 2008 (1253/08).
- 16 May 2008 (1471/08) [request 1].
- 16 May 2008 (1472/08) [request 2].
- 16 May 2008 (1507/08).

## Analysis

---

22. Section 14(1) is an exclusion that provides that –

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

23. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the ‘Tribunal’) decision in *Ahilathirunayagam v Information Commissioner’s Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning so would be likely to cause distress or irritation. The enquiry is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has

developed from these general principles and they guide him in applying his test.

24. When considering what evidence can be considered when making this determination, the Commissioner endorses the Tribunal's consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/2007/0088) (paragraph 21) where it stated:

*'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'*

25. The Commissioner has therefore taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious if it demonstrates a continuation of behaviour which is obsessive and/or represents a significant burden when considered collectively.
26. The Commissioner has issued Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
- (1) whether compliance would create a significant burden in terms of expense and distraction;
  - (2) whether the request is designed to cause disruption or annoyance;
  - (3) whether the request has the effect of harassing the public authority or its staff;
  - (4) whether the request can otherwise fairly be characterised as obsessive; and
  - (5) whether the request has any serious purpose or value.

27. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* (EA/2007/0088)(at paragraph 26). In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.

28. The public authority has indicated in its arguments to the Commissioner that they believe that all five factors are satisfied by this request and this led it to the conclusion that these two requests were vexatious. It is noted that the factors do overlap, however, the Commissioner has structured his analysis by looking at each of them in turn.

(1) *Whether compliance would create a significant burden in terms of expense and distraction*

29. When considering this element of his test the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is

*"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."*

30. The Commissioner therefore expects a public authority to show that complying with the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.

31. The Tribunal in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114) emphasised that previous requests received may be a relevant factor:

*'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor'* (paragraph 70 of its decision).

32. It is therefore appropriate for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether each request represents a significant burden to a public authority as noted above. This means that even if a request does not impose a significant burden when considered in isolation, it may do so when considered in context.



33. The public authority asked for the Commissioner to take into account the following arguments which the Commissioner considers to be relevant to the burden of the request:
- The complainant has made 27 requests, including these two. They span in time from 20 March 2007 to 16 May 2008. In its view it responded to all the other 24 requests in accordance with the Act without finding any of them vexatious. It explained that it accepted that on one occasion it had to correct a mistake in its response and on other occasions it had been late, but those errors did not prevent it from finding that these two requests are vexatious.
  - The public authority has already considered the grievance that is connected to these requests and they explore the same ground. The Commissioner has asked the public authority to evidence that these particular issues had been considered within the grievance. The public authority has explained that it would have been very onerous for it to do so and advised the Commissioner to contact the complainant should he require further information about the grievance. The Commissioner did as suggested and has not been convinced that these particular issues had been addressed.
  - 21 of the requests were for information about the individuals who investigated his grievance, or concerned groups that the complainant knew would include those individuals.
  - The public authority believes that there are other appropriate forums under which the complainant can address his central concerns. These include its evasion hotlines that are designed to consider issues such as potential tax evasion.
  - In addition to the 27 requests the complainant has also written a large number of letters complaining about the failings he believes the public authority has, all of which took the time of the public authority to consider and then respond to.
34. The complainant believes that the burden has been overstated and that his requests require answering as they are in the public interest. The Commissioner has asked the public authority if it had recorded the time it had taken to respond to the relevant requests. It explained that it had not but that it was self evident that it would have taken a considerable while to respond to the requests that it had received from the complainant. The Commissioner appreciates that this is so.
35. The Commissioner must analyse whether there is a significant burden in terms of expense and distraction for the two remaining requests.

36. Both requests 1 and 2 concern lodging allowances. They are ancillary questions to those considered in four previous requests (1265/07, 1279/07, 1467/07 and 1635/07). The Commissioner notes that the complainant has exhausted the grievance procedure and has chosen not to embark upon reporting the problem that he believes exists through the public authority's hotline. He understands that the requests are connected to a large quantity of previous correspondence about the same matter. He believes that the quantity of documentation has led to individuals being drawn away from the public authority's core purposes. He is therefore content that each of these requests constitutes a burden in terms of both expense and distraction. He believes that this factor must be considered as significant when deciding whether each request is vexatious. It is significant but not sufficient by itself.
37. The Commissioner has also considered in this determination the approach of the Information Tribunal in *Betts v The Information Commissioner* (EA/2007/0109), where indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:
- '...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'*
38. The Commissioner has examined the pattern of the requests in detail (as in the findings of fact section above) and is also satisfied that this may possibly be the case. However he does note that the two requests that he is considering appear limited to specific issues and appear to be finite in nature.
39. To conclude this section, assessing all the circumstances of the case the Commissioner has found that each of the particular requests would impose a significant burden in terms of expense and distraction for the reasons outlined above. He therefore finds in favour of the public authority on this factor for each of the two requests.

(2) *Whether each of the requests were designed to cause disruption or annoyance;*

40. The public authority has provided some arguments to support its reliance on this factor. It explained that in its view these requests were aimed at making life difficult for those individuals who were to consider his grievance. It follows that it was causing disruption and annoyance. It explained that the complainant would have been aware that 21 of the 27 requests would include these specific individuals. It also explained that it believed it had provided the complainant with the information that was requested for these requests, so to ask for it again could only be said to be designed to cause disruption or annoyance.
  41. The complainant has argued strongly that the purpose of these requests was to obtain evidence on behalf of the public about potential wrongdoing that may have occurred. He may be in a unique position as a former employee of asking the necessary questions so that wrongdoing is exposed. He explained that they were not designed to cause disruption and annoyance to the public authority but instead were to ensure that the public authority was transparent. The Commissioner understands that it is important for the public authority to always be seen as being a beacon of good practice in matters of taxation as this is a matter on which it judges others. He is not satisfied that the requests have been answered in previous correspondence either.
  42. The Commissioner has not been convinced by the public authority's arguments for this element. He is not satisfied that either of the two requests were designed to cause disruption or annoyance in this case. He therefore finds in the complainant's favour for this factor in respect to both requests.
- (3) *Whether each of the requests has the effect of harassing the public authority or its staff*
43. The public authority explained to the Commissioner in its additional arguments that it did not believe that the requests were causing distress to its staff. The Commissioner therefore will only consider whether the requests had the effect of harassing the public authority itself and not its staff.
  44. The complainant has stated that he finds it offensive to be regarded as harassing the public authority. The complainant has explained that he would not have condoned the incidents that he believes have occurred and has at all times tried to assist the public authority in ensuring that it deals with the issues that he has raised.
  45. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the request and not the requestor

that must be considered. He has considered the definition in the Shorter Oxford English Dictionary and believes that the following alternative reflects what his guidance means:

*'To tire out, exhaust.'*

46. The public authority argued that the history of the third request made on 16 May 2008 (1507/08) [that has now been withdrawn] supports its contention that it was being harassed. It explained that after the request directly preceding it (1253/08) was rejected for exceeding the costs limit, the complainant wrote to it offering to pay those costs. It explained that this offer was couched to give the distinct impression that he would raise the issue with the press and the press would be paying on his behalf. The Commissioner notes that at all times in the correspondence that he is privy to that eventuality was expressly stated to be a last resort. However, the Commissioner agrees that this does amount to an implied threat and he has been told by the complainant that this option remains open for him to consider. While this request has been withdrawn the Commissioner considers that this evidence must be considered.
47. The public authority has explained that it has dealt with all the other requests that the complainant has made along similar lines and that it has reached the precipice where however it answered the request it would still inevitably lead to further requests for information on very similar grounds. It argued that the very high volume of requests could be correctly defined as having the effect of harassing the public authority under the definition above. The Commissioner notes that these arguments are similar to those accepted in paragraphs 37 and 38 above. He does note that the requests are cordial in tone and language in all the correspondence that he has.
48. The Commissioner believes that these arguments are quite finely balanced, but that the public authority has provided him with enough evidence to find that this factor has been satisfied for the two requests he is considering. He therefore finds that this factor favours the public authority. However, he does not place much weight on this factor on the circumstances of this case.

*(4) Whether the requests can otherwise fairly be characterised as obsessive*

49. The public authority has argued in its internal review that these requests were obsessive. It has explained that it had already explained its position under the Act in respect of a number of previous requests and the complainant requested very similar information regardless. It explained that in its view the matter had already been considered in

relation to the personal grievance and had by choice not been raised in what it believed constituted the correct forums by the complainant otherwise. It explained that it had accommodated the complainant by responding to the 24 previous requests without relying on section 14(1) but that these specific requests were the ones that helped prove an obsession. It noted that the concern that the complainant voiced has been an issue for four years at the time of the request [in two of those years he made information requests]. It explained that the considerable correspondence alongside the requests amounting to at least 80 items provided further indications of obsessive behaviour. The Commissioner also notes that the complainant has not availed himself of external mechanisms such as the Parliamentary Ombudsman and has instead chosen to pursue this matter through a variety of correspondence.

50. The complainant explained that the requests were not obsessive. They related to different information that he was yet to obtain on a specific issue that is of considerable public concern. The public authority by its own admission sent incorrect information to him on one occasion, on another it sent a letter for him to someone else, in two of the requests he was making reasonable clarifications after being asked by the public authority and on a number of occasions it exceeded the twenty working days to respond to his requests. He stated that he was persevering with his enquiries because they were in the public interest, were not burdensome and were necessary. He explained that in the context of his correspondence it was incorrect to view the requests as being obsessive. He explained that the evidence was necessary to enable him to take further action.
51. The Commissioner provided the public authority with an opportunity to explain where exactly it believed that its handling of the grievance covered the issue at the heart of the request. He asked the public authority in clear terms. The public authority chose not to take this opportunity and informed the Commissioner that he could approach the complainant should he want to know about the contents of the grievance. The Commissioner has done so and believes that the particular issues that are contained in the requests have not previously been dealt with. He has not been provided with satisfactory evidence by the public authority to come to any other conclusion.
52. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:

*'It will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they have independent evidence on the issue (eg reports*

*from an independent investigation). The more independent evidence available, the stronger the argument will be'.*

53. The Commissioner notes that the original grievance was investigated by individuals who were independent of the dispute but part of the public authority. He notes that the complainant disagrees with the verdict and his requests accordingly move to ascertain the correct evidence that he believes should have also been considered. The Commissioner is considering the persistence or obsessiveness of the way the complainant has gone about gathering this additional evidence.
54. The Commissioner accepts that there is a fine line between persistence and a request being obsessive or manifestly unreasonable. In this instance, the Commissioner believes that the complainant has not crossed over this line. He believes that the requested information relates to a specific area of operations and he has not been provided evidence that the grievance or the previous requests have dealt with this concern. He has considered the pattern of requests and the circumstances as outlined in paragraphs 14 and 36 and whether it can be said that taken together that the behaviour exhibited by the requestor can be seen as obsessive. He has not been satisfied by the arguments presented by the public authority that the behaviour in relation to lodging allowances can be seen as obsessive, but believes that it is a borderline case. The Commissioner believes that it is correct that a line must be drawn but that the public authority has been incorrect in this case and cannot fairly regard these two requests as being obsessive. He therefore finds in favour of the complainant on this factor in respect to both requests. However, he does not put much weight on this factor given the circumstances of this case.
- (5) *Whether the requests have any serious purpose or value.*
55. By itself, whether each request does or does not have value is not of significance given that the freedom of information legislation is not concerned with the motives of an applicant, but in promoting transparency for its own sake. However, the Commissioner acknowledges that should an authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
56. The public authority explained that it believed that the requests are driven by the motive to expose some sort of shortcoming or failing of the public authority or of the individuals whom it employs. It stated that it believed that the response to the requests had also already been provided. It explained that its evasion hotline should be used if the complainant wants his concerns about the general matter to be

investigated. It explained that the pattern, number and content of the requests as linked to his grievance provide good evidence that these requests have no serious purpose or value.

57. The complainant argues strongly that there are strong reasons why this information should be provided. These arguments have been rehearsed in paragraph 41 of this notice. In particular he has made targeted requests concerning an important issue for which the public authority is meant to be the beacon of good practice. It is important that the public authority is transparent in respect to its internal actions, particularly in relation to matters where it must judge others.
58. The requests that he is considering concern lodging allowances within the public authority. The Commissioner believes that these requests have both a serious purpose and value in understanding the position of the public authority. He notes that it is important that the public authority is transparent and accountable in these issues. He believes that this factor has considerable weight as there is a serious purpose in finding out about tax liability in internal lodging allowances. He has been convinced by the complainant that there is a real public interest in requesting this information (whatever its content). He therefore finds in the complainant's favour in relation to this factor for these two requests.

*Could a reasonable public authority refuse to comply with the requests on the grounds that each is vexatious?*

59. The Commissioner recognises that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.
60. On the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would not have found the two requests about lodging allowances vexatious. He believes that on this occasion the public authority has failed to convince him. In arriving at this decision, the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh -v- the Information Commissioner* [EA/ 2007/0088], where the Tribunal commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor to be made out from his guidance. In this case he has found that two factors are satisfied in this case and only one is significant. However three factors were not satisfied and he regards one as being particularly significant. The Commissioner's decision in this case therefore rests on the complainant's requests having a serious purpose and value, which in his view outweighs the significant burden arguments in respect to these particular requests.

61. In reaching this decision the Commissioner notes that the findings are made on the circumstances at the time of these particular requests and that this finding does not preclude the public authority from relying on section 14(1) of the Act in response to future requests for information, where it believes that a reasonable public authority could find those requests vexatious.

## **The Decision**

---

62. The Commissioner's decision is that the public authority did not deal with the two requests for information in accordance with the Act in that section 14(1) was applied incorrectly.

## **Steps Required**

---

63. The Commissioner requires the public authority to take the following steps for each of the two requests to ensure compliance with the Act:

*Confirm or deny to the complainant if the recorded information requested is held and either disclose this information to the complainant or provide him with a valid refusal notice in accordance with the requirements of section 17(1) of the Act.*

64. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

---

65. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.



## Right of Appeal

---

66. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 sent.

**Dated the 25<sup>th</sup> day of May 2010**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser**

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

## Legal Annex

### Section 1

#### General right of access to information held by public authorities

Section 1 of the Act provides that:

(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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

### Section 14

#### Vexatious or repeated requests

Section 14 of the Act provides that:

(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.