

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 18 October 2010**

**Public Authority:** Attorney General's Office  
**Address:** 20 Victoria Street  
London  
SW1H 0NF

### Summary

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The complainant requested information from the Crown Prosecution Service (CPS) relating to chemical warfare tests on volunteers conducted in and around 1960 at a Ministry of Defence establishment at Porton Down. The request was for information concerning the effects of the tests on individual volunteers and the scope for prosecuting members of the then scientific staff at Porton Down.

The Commissioner decided that CPS had applied correctly the section 12(1) exemption of the Act; he also decided that it had breached section 16(1) of the Act.

CPS invited the complainant to refine his request as outlined in section 16(1) of the Act which he did. CPS responded appropriately and the Commissioner is satisfied that CPS have now complied with section 16(1) so far as they are able.

### The Commissioner's Role

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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

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2. Porton Down (Porton) in Wiltshire is the site of a Ministry of Defence (MOD) research establishment, the Defence Science and Technology Laboratory, formerly known as the Chemical Defence Experimental Establishment. This, and its successor bodies, carried out experiments relevant to chemical warfare between 1939 and 1989 on thousands of human volunteers, many of them service personnel. Some of the experiments involved the administration to volunteers of potentially harmful chemicals including Sarin, CS gas, mustard gas, hallucinogens and Lipopolysaccharides (LPS).
3. In May 1953 a young serviceman volunteer (the volunteer serviceman) died very shortly after being the subject of an experiment at Porton Down; the contemporary inquest into his death decided that the cause of his death had been misadventure. In 2002, arising from challenges by the complainant in this matter and other Porton volunteers, and following enquiries by Wiltshire Police (the Police), the High Court quashed the original verdict and ordered a new inquest. In 2004 the new inquest found that the airman had been unlawfully killed by the application of a nerve agent in a non-therapeutic experiment. In June 2006 MOD acknowledged that there appeared to have been gross negligence and paid compensation to the volunteer serviceman's family.
4. In 1958 some small scale civilian medical research experiments on body temperature regulation had been carried out by the Medical Research Council (MRC), not at Porton, which involved observing the effects in man of a LPS known as Pyrexal, a substance which induces in humans the signs and symptoms usually associated with fever. In 1960 scientists at Porton themselves conducted experiments with Pyrexal to explore its effects on volunteers in more detail. MOD records show that 115 service volunteers took part in the Porton LPS experiments, one of whom was the complainant.
5. In recent years a number of former Porton volunteers have become concerned at the impact on their long term health of some of the activities to which they had been subjected. The complainant had volunteered to be a test subject at Porton on, he says, three separate occasions in 1959 and 1960. That from 6 to 13 August 1960 was the only one of his visits for which MOD now hold records; it involved the administration of Pyrexal. The complainant now suffers from ill health and has become concerned that the experiments at Porton, including those with Pyrexal, for which he volunteered, may have been a contributory or even the sole cause.

6. Following a lengthy campaign by the complainant and others, an investigation was conducted by the Police between 1999 and 2003 codenamed "Operation Antler". At its height, more than 20 officers took part. Following the investigation, papers were sent to the Crown Prosecution Service (CPS) and examined by a Senior Crown Prosecutor who gave the matter exhaustive consideration before deciding in July 2003 that there were not sufficient grounds for bringing criminal charges in connection with the Porton experiments.
7. Early in the life of Operation Antler the Police decided not to fully index the records being generated by the investigation. The records are voluminous, occupying three former police holding cells and, because they were not fully indexed, cannot now readily be searched to locate and retrieve specific pieces of information.
8. The complainant remains dissatisfied at the outcome of the Operation Antler investigation and the outcome of the subsequent CPS consideration of it. He is concerned that information from Operation Antler and related issues, which could be of value to himself and other Porton volunteers, is being withheld from him. He has continued to campaign for the authorities to take further action: to make the full facts public, for the Police to reopen the Operation Antler investigation, and for CPS to give further consideration to bringing criminal charges in connection with the human experiments conducted at Porton.

## The Request

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9. The Commissioner notes that under the Act the CPS is not a public authority itself, but is actually an executive agency of the Attorney General's Office which is responsible for CPS and therefore the public authority in this case is the Attorney General's Office not the CPS. However, for the sake of clarity, this decision notice refers to the CPS as if it were the public authority.
10. On 9 November 2009 the complainant asked CPS for the following information:

*(1a) Were you ever provided with any information as to the involvement of [a named former Porton Down scientist] - who is known to have conducted numerous **nerve agent experiments** [complainant's emphasis] on servicemen, and were you at any time made aware that he had been interviewed by police?*

*Referring to Porton Technical Paper 841 that depicts 115 servicemen having been injected with, and having inhaled LPS in an experiment that took place in the Station hospital at Porton Down.*

*(2a) Were you ever informed by the police that only six airmen - including myself - were ever accounted for after LPS exposure, this despite them knowing of the inherent dangers associated with LPS exposure. (b) Were you ever advised that LPS is a bacterial endotoxin that kills in micro-gram doses, that in animal test studies invariably all test subjects die. ? (c) Were you ever advised that LPS does not trigger an auto immune response in the animal or human host?(d) That LPS is also linked to RA an auto immune system disease that I suffer from? (e) Did you know, or were made aware of the hazard warnings relating to just the **handling** [complainant's emphasis] of LPS?*

*(3) How many servicemen in total reported having been injected with LPS in the Porton Down station hospital, and did you gain access to any records that would attest to the injections having taken place and the dosage administered? If so were the records "summary records" or were there other named records such as hospital records, experimental logs, ward notes, etc? (please be specific)*

*In your report to me you refer to "previous research papers from 1956" [ICO note: 12 December 2003 letter from CPS to the complainant at page 45] relating to the intravenous administration of LPS where you make mention to the following after effects: headache, malaise, shivering, and aching back and limbs due to induced fever.*

*(4a) What specific research paper/s are you referring to? (b) Who conducted the experiment and reported the results? (c) Where was the experiment conducted? (d) Were the after effects you made mention to in your letter to me the **only** [complainant's emphasis] after effects reported on in the "previous report papers"? (e) Did you ever receive a copy of [a named forensic scientist's] report given to police as to the effects of LPS exposure on humans [the LPS report]?*

*I will now refer you to the "rubber mixes" that were applied to my arm.*

*(5a) Were you ever provided with record/s **bearing my name** [complainant's emphasis] that would attest to the chemical makeup of the "mixes" that were applied to my arm?*

*Were you ever informed that [the volunteer serviceman] at the time of his killing at Porton Down was also undergoing a series of "rubber mix" tests that were taped to his forearms? (plural) This of course is but one reason why several days of his second inquest were held in camera and the transcripts being kept secret.*

*(6) Did you receive -or gain access - to any record/s **bearing my name** [complainant's emphasis] (apart from the Summary Record that was given to me and is now known to be false) pertaining to the CS gas test/s that was performed on me? (this requires only a YES or NO answer)*

*(7) Considering that full records are available for veterans who attended Porton Down many years before my attendances did you make any inquiries as to why my records are missing?*

*(8) Were you ever informed as to the official job position at Porton Down of [a named scientist] who is named as co author of PTP 841 who you say died during the police investigation?*

11. On 4 December 2009 CPS replied saying that it did not hold a file relating to the complainant's name. CPS said that the investigation had been conducted under the name of "Operation Antler – The Porton Down Enquiry". In order to meet his request CPS would have to recall and individually review a vast amount of case papers stored in many boxes in a warehouse off site. This would take significantly more than the 3½ days work limit specified under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, Statutory Instrument 2004 No. 3244 (the Regulations). CPS said that this limit, which was set at £600, represented the estimated cost of one person spending 3½ working days determining whether the Department held the information and, if so, and locating, retrieving and extracting the information. CPS said that consequently, it was not obliged to meet this part of his request in accordance with section 12(1) of the Act.
12. Following an email of 29 December 2009 from the complainant, CPS referred the matter to one of its senior officials for review. On 22 January 2010, CPS reported to the complainant the outcome of its internal review. CPS said that the complaint had been correctly handled in terms of both procedure and substance and confirmed that CPS was not obliged to meet the request in accordance with section 12(1) of the Act.
13. On 3 February 2010 CPS told the complainant that the case papers had not been delivered to it by Wiltshire Police (the Police) in the form he had suggested in his emailed request. CPS said that the files it held were grouped according to periods and types of testing and that it held no

easily identifiable case file relating to the complainant personally. CPS added that individuals appeared in a number of different groups and cut across different sections of the file. Accordingly identifying the material requested was no easy task and would have clearly exceeded the time and costs that the Act allowed. The complainant did not accept what CPS said and accused it of a “cunningly contrived scheme to cover up the crimes against humanity committed at Porton Down”.

## The Investigation

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### Scope of the case

14. On 25 January 2010 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 that it would not, in his view, take more than the set limit of £600 to process his requests; answers to his request could, he said, easily be accessed from his case file – one of six which, he said, the Police had sent to CPS.
15. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. This Notice addresses the issue of the application by CPS of the section 12 exemption (where cost of compliance exceeds appropriate limit) and the section 16 duty on CPS to advise and assist.

### Chronology

16. On 16 April 2010 CPS confirmed to the Commissioner that it held no Operation Antler case file on the complainant. CPS said that the information held was stored in 41 (a total later revised to 43) boxes of material; the task of reviewing the material, understanding it and trying to link information to the complainant’s request could take months.
17. On 29 April 2010 a member of the Commissioner’s staff met with CPS officials including the relevant Senior Crown Prosecutor. CPS said that very large volumes – rooms full - of papers all indexed manually were held by the Police and the MOD. CPS explained that the papers held by it were voluminous. The only form of indexing was an archive index of the boxes of material passed to CPS by the Police after Operation Antler. CPS said that around half of the material was generic in nature and about one seventh related to specific tests on identifiable individuals; all of the information held by CPS that was relevant to the complainant was already in his possession having been passed to him on 12 December 2003. To cross reference that information to the generic material as the



18. Also on 29 April 2010 the Commissioner's staff wrote to the complainant and CPS and drew attention to section 16 of the Act, inviting the complainant to consider with CPS if it might be possible to refine his request in such a way that could enable CPS to comply with at least part of the information request within the statutory cost limit.
19. On 4 May 2010 the complainant told the Commissioner that he did not accept that it would cost more than £600 to provide him with the details requested. He said that this was a convenient way for CPS to deny him answers to very simple questions. In a court situation, which he said was being denied him, CPS would be required to provide answers no matter the cost. He disputed the accuracy of the information that CPS had previously given him about his 8 August 1960 visit to Porton Down. He said that he had been injected with an unknown substance; the record that he had inhaled Pyrexal was, he said, falsified.
20. On 26 May 2010 the Commissioner asked the complainant if he had been able to narrow down his request or refine it. The complainant explained that he was suffering from what he referred to as "freedom of information fatigue" after many years of seeking information with little success. However he agreed to try to narrow his request to CPS to see what transpired.
21. On 27 May 2010 the complainant emailed CPS with a refined request. He said that his main concern at present was the record of the LPS experiments conducted on himself and others at Porton. He disputed some of the contents of the 12 December 2003 CPS letter and said that he had concluded that the Police and CPS did "purposely conspire to obstruct and pervert the course of justice." He adapted his request to take the form of five questions (the refined request):

*(Q1) Did the CPS ever retrieve any records that would attest to the makeup of the "drops", the nature of the experiment, the exact date they were administered, and why the procedure would be carried out in the station hospital ?*

*(Q2) Did the CPS ever receive records (apart from the "summary record" - known to be false - that was given to me, and apart from PTP 841 [ICO note: Porton Technical Paper Number 841]) for all 115 servicemen who were exposed to LPS ? If so what type of records were they (I.E. medical records. experimental*

*records. lab records. ward notes.etc.) and did any of the records provide details of the experiment, such as that shown in the [volunteer serviceman] record who was unlawfully killed at Porton Down?*

*(Q4) Is the CPS aware that there at least 109 servicemen from a total of 115 who cannot be accounted for after being exposed to LPS?*

*(Q5) Was the CPS ever made aware of the lasting systemic and lethal qualities that LPS exposure has on those so exposed to this highly toxic substance?*

*This important question pertains to the MRCs [Medical Research Council's] LPS experiment that was carried out by the MRC on five healthy human volunteers some months prior to the Porton Down experiment. It needs to be pointed out that according to Thames Valley Police none of the "volunteers" can be found nor can their records. [A named former Porton scientist] who conducted the experiment, (made reference to in PTP 841) also cannot be found. Police have informed me [the named former Porton scientist] has returned from Canada where he was an emeritus professor at Calgary University, but have have so far been unable to trace his whereabouts in the UK -which is baloney.*

*(Q6) Has the CPS ever accessed [the named former Porton scientist's] report paper on LPS exposure? If so has the CPS made note of the startlingly different test results shown in [the named former Porton scientist's] study report paper as to that of PTP 841 the study report from Porton Down? If the CPS has not been provided with [the named former Porton scientist's] result paper then you have not been fully informed of the facts.*

*[Note by the Commissioner: there was no Q3 within the refined request]*

22. On 27 May 2010 CPS replied saying that the abusive language the complainant had used was unacceptable. CPS said that it looked to help him find the information requested, but would not enter into any correspondence whilst the complainant made unfounded and unwarranted accusations. CPS said that the Act was not there to re-review previous decisions, but to be more transparent about the information held. CPS would endeavour to provide "recorded information" but had to comply with the Act. CPS confirmed that all the



information held was on paper and that it did not have a database that would help it to easily access any of the information.

23. Also on 27 May 2010 the complainant replied to CPS referring to the "fairy tale" report it had provided and explaining that he attributed his current health problems to the LPS experiments in which he had participated at Porton. He again disputed the accuracy of what CPS had said in the past about the LPS experiments on a cohort of 115 servicemen at Porton and urged CPS to prove his allegations unfounded rather than cut off further correspondence.
24. On 29 June 2010 CPS provided the Commissioner with the index of the contents of the 43 boxes of papers held by CPS relating to Operation Antler and which it had agreed to provide on 29 April. This listed in very general terms what was in each box. CPS provided responses to the refined questions put by the complainant on 27 May.
25. CPS and the Commissioner's staff corresponded further, clarifying aspects of the index of contents that CPS had provided. On 21 July 2010 CPS wrote to the complainant providing the answers to the questions posed in the refined request in so far as that information was held by CPS.
26. On 22 July 2010 the complainant told CPS that he was not satisfied with the answers given to his refined request and asking for a "review" to be undertaken. He also made a fresh request for other related information which is outwith the scope of this matter.
27. On 26 July CPS told the complainant that it had responded to his refined request and that the matter was now closed. The complainant immediately protested that he did not regard the matter as closed and said that it had become apparent to him that the CPS correspondence represented "the corrupt protecting the corrupt". He complained to the Commissioner about what he saw as CPS's "utter contempt" for the Act.
28. On 5 August 2010 the Commissioner's staff asked CPS, in relation to part 4(e) of the original request from the complainant for the LPS report, if the LPS report was known to be held by CPS and whether it might be possible for CPS to locate it within the parameters set by the appropriate limit. On 19 August CPS told the Commissioner that it had tried unsuccessfully to find the LPS report, despite assistance from the then relevant Senior Crown Prosecutor and her then assistant, and was unable to say for sure whether or not it was held without conducting a full search.

29. On 1 September 2010 the Commissioner's staff reported to the complainant the results of the Commissioner's investigation and invited him to accept informal resolution of his complaint which he declined to do.

### **Findings of fact**

30. The Commissioner has seen that CPS hold 43 boxes of relevant papers relating to Operation Antler containing, CPS estimate, some 35,000 pages. Many of the CPS papers are now old and in poor condition and difficult to read. There is no detailed index to the database, only a brief index of very general titles for the individual boxes but no indexes within the individual boxes.

31. In 2004 a second inquest into the death of the volunteer serviceman decided that the cause of his death had been "unlawful killing" rather than "misadventure" which had been the verdict reached in the first inquest in 1953. However no prosecution followed this finding because, CPS said, the relevant Porton staff were, by then, all deceased – there was no one left to prosecute. A CPS news release of 12 June 2006 set out the reasoning that CPS adopted in the volunteer serviceman matter. CPS told the Commissioner that there have been no other confirmed instances of premature deaths of volunteers at Porton, or of serious injury which can reliably be said to have been caused by the testing carried out there. CPS have told the Commissioner that they know of no evidence that the volunteer serviceman's death was anything other than an isolated and tragic incident and the Commissioner's investigation found no evidence to the contrary.

32. The CPS files are grouped according to periods and types of testing. There is no easily identifiable case file relating to the complainant personally that is held by CPS. Individual Porton volunteers appear in a number of different groups in the CPS database and references to them cut across different sections of the CPS files.

33. In a 51 page letter to the complainant of 12 December 2003, CPS explained in considerable detail the formidable legal and evidential obstacles that it would have had to overcome to succeed in any prosecution that it might have contemplated arising from the Operation Antler investigation into the testing at Porton. These obstacles had led CPS to decide not to prosecute any of the surviving Porton scientists. In 2006, following a further review in the light of the second inquest into the death of the volunteer serviceman, CPS reaffirmed that there was still insufficient evidence to prosecute any living person for a criminal offence over the testing which had been carried out at Porton.

## Analysis

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### Exemptions

#### **Section 12: Cost of compliance exceeds appropriate limit.**

34. Section 12(1) of the Act states that a public authority is not obliged to comply with the requirements of section 1(1) of the Act if the authority estimates the cost of complying with the request would exceed the appropriate limit. Section 12(2) of the Act states that a public authority is obliged to comply with the requirements of section 1(1)(a) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (Statutory Instrument 2004 No 3244) (the Regulations). The appropriate limit provided at paragraph 3(2) of the Regulations is currently set at £600 for central government departments such as CPS and at £25 per person, per hour equates to 24 hours work, (600 divided by 25 equals 24).
35. The Commissioner has seen that parts (5a), (6) and (7) of the complainant's request of 9 November 2009 are subject access requests. In its refusal notice CPS confirmed to the complainant that it did not hold a file referring to the complainant's name. CPS added that to determine what information was held regarding the freedom of information and subject access requests would require individual review of the Operation Antler case papers which would require significantly more time than the appropriate limit allowed. In this matter where parts (5a), (6) and (7) of the requests fall to be considered under the Data Protection Act 1998 regime and are mixed with the remainder which are all freedom of information matters, the subject access requests need to be considered separately for the purpose of the regulations. The Commissioner decided that the freedom of information parts of the request are sufficiently similar in relation to aspects of the Porton testing that they could be aggregated with each other for the purpose of the Regulations. He considered the application of the appropriate limit to the freedom of information and subject access elements of the request separately and was satisfied that the appropriate limit was exceeded for both.
36. The Commissioner in his analysis considered whether the complex freedom of information request and complaint was several requests for the same or similar information. He decided that it was all part of the same request and that its numerous elements would need to be aggregated for the purposes of section 12 of the Act. The Commissioner

was satisfied that the information sought by each element is so closely related to the information sought by the other elements that each element is simply part of the overall picture on the Porton testing and its consequences.

37. The Commissioner therefore considered that, as the request relates to the same or similar information, the estimated cost of complying with the requests is to be taken to be the total costs which may be taken into account regarding locating and extracting the information. The Commissioner found that the cost when considering the appropriate limit in this situation is the cost of dealing with the aggregated freedom of information requests and the subject access request separately. In such situations the public authority should go back to the applicant and provide him with advice under section 16 of the Act.
38. In estimating the cost of compliance, Regulation 4(3) of the Regulations states that a public authority can take the following into account:
  - determining whether it holds the information requested,
  - locating the information or documents containing the information,
  - retrieving such information or documents, and
  - extracting the information from the document containing it.
39. CPS confirmed, and the Commissioner accepts, that identifying the information requested would cut across different sections of the files held by CPS which are not indexed. Any search would of necessity have to be carried out manually and the Commissioner is satisfied that a full search would far exceed the appropriate limit, the time allowed for under the Act. As a result the Commissioner is satisfied that CPS was correct to say that it could not identify the information requested without having to conduct a search that would take well in excess of the statutory appropriate limit. The Commissioner is therefore satisfied that identifying the information requested would require an extensive manual search which would exceed the appropriate limit of time and costs that are allowed for under section 12(1) of the Act.
40. The Commissioner considered the juxtaposition of section 12 cost estimates and the duty to provide advice and assistance under section 16. He was aware of a previous Information Tribunal decision on this matter and therefore considered its application in this case.

## **Section 16: Advice and Assistance**

41. The Information Tribunal in the case of *Roberts v the Information Commissioner (EA/2008/0050)* agreed with the Commissioner's view that

whilst the public authority did not deal with its obligation under section 16 to provide advice and assistance that might have enabled the applicant to refine his request, this did not invalidate the section 12 refusal. They acknowledged the importance of public authorities discussing the scope of a request with the applicant so that complying with it would not exceed the costs limit, but nevertheless made the following findings:

- “There is nothing in the language of section 12 itself to suggest that the estimate may be challenged for any reason other than that it fails to comply with the Regulations.”
  - “Nor does section 16 specify that failure to comply with its requirement should invalidate an estimate. In fact no sanction is mentioned in that section and it is to be inferred that the only available sanctions are those set out in Part IV of the FOIA, which make no reference to any consequential impact of breach on the applicability of other provisions.”
  - The Code of Practice issued by the Secretary of State under section 45 of the Act indicates that the requirement to give advice only arises once the public authority has reached the stage where section 12 applies (“Where an authority is not obliged to comply with a request for information...”). Neither the statute nor the Code of Practice contain any suggestion that avoiding the obligation to comply is conditional on first complying with the Code of Practice; or that a public authority must consult with the person seeking information as part of the process by which it reaches an estimated costs figure. This is entirely consistent with the purpose of the Code of Practice, (which is to provide guidance only), and with the language of section 16 itself, which makes it clear in subsection (2) that the only impact of the Code of Practice is that a public authority which complies with it will be found to have provided the advice and assistance necessary to avoid a breach of subsection (1).”
42. The Tribunal were of the view that if they had declared that the failure to advise or assist invalidated the costs estimate in this case, “we risk falling into the trap of creating law, rather than interpreting law as created by Parliament and the Act”.
43. The Commissioner established in his communications with CPS that it considered that at least some of the requested information may be held and is subject to section 12(1) of the Act. In order to ascertain what information is held and if it is held to locate and retrieve it, CPS would need to undertake a costly manual search of its records in order to provide this information. CPS would only be undertaking this research, investigation and compilation of data for the sole purpose of satisfying the complainant’s Freedom of Information Act request.

44. During the course of the Commissioner's investigation, CPS offered - as required by section 16(1) of the Act - to advise and assist the complainant to refine his request in an attempt to bring at least parts of it within the search parameters defined by section 12(1) of the Act and the Regulations. As this advice and assistance had not been provided by the time of the internal review on 22 January 2010, it follows that CPS were in breach of section 16(1) of the Act.
45. In his analysis of section 16 issues, the Commissioner considered the advice and assistance that had been provided to the complainant by CPS and the steps it had taken in order to satisfy its obligations under the Act. The Commissioner concluded, that since the cost of making a comprehensive attempt to retrieve the information sought in the refined request would still require a full search of the CPS records and so would still exceed the appropriate limit; paragraph 14, "Advice and Assistance and Fees" of the section 45 Code of Practice states that the public authority needs only to consider providing an indication of what, if any, information could be provided within the cost ceiling. However CPS did respond to the refined request, and complied with it to the extent it was able, on the basis of what information was readily available. CPS made additional efforts to identify any recorded information that might be held by CPS by means other than by a full search of all of the recorded information by drawing on the recollections and assistance of the then relevant Senior Crown Prosecutor and her then assistant. He is satisfied that CPS could not reasonably have done more within the parameters of section 12(1) of the Act and the Regulations.

## **The Decision**

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46. The Commissioner decided that CPS had applied correctly the section 12(1) exemption of the Act but had breached section 16(1). CPS invited the complainant to refine his request as outlined in section 16(1) of the Act which he did. CPS responded appropriately and the Commissioner is satisfied that CPS have now complied with section 16(1) so far as they were able.
47. The Commissioner's decision is that the public authority dealt with the request for information largely in accordance with the Act.

## **Steps Required**

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48. The Commissioner requires no steps to be taken.



## Right of Appeal

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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](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 18<sup>th</sup> day of October 2010**

**Signed .....**

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

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

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

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

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

**Section 1(2)** provides that -

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

**Section 1(3)** provides that –

"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."

### Exemption where cost of compliance exceeds appropriate limit

**Section 12(1)** provides that –

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

**Section 12(2)** provides that –

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

**Section 12(3)** provides that –

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

**Section 12(4)** provides that –

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

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

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

**Section 12(5)** – provides that

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

### **Duty to provide Advice and Assistance**

**Section 16(1)** provides that -

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

### **Statutory Instrument 2004 No. 3244.**

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

#### **Regulation 3: The Appropriate Limit**

**Regulation 3 (1)** provides that -

"(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 1 of Schedule 1 to the 2000 Act, the appropriate limit is £600."