

Freedom of Information Act 2000 (Section 50)

Date: 25 May 2011

Public Authority: Wyre Borough Council
Address: Civic Centre
Breck Road
Poulton-le-Fylde
FY6 7PU

Summary

The complainant submitted two requests for information relating to council lawnmowers. The public authority responded, disclosing some information, but subsequently refused to conduct an internal review on the grounds that the requests were vexatious, under section 14(1) of the Act. The Commissioner finds that the requests were incorrectly refused as vexatious and requires the public authority to provide a response to the complainant which complies with the requirements of section 1 of the Freedom of Information Act 2000.

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 was involved in a road accident - a collision involving a council lawnmower.
3. The complainant's fiancé has also made requests to the council which have been refused as vexatious.

The Request

4. The complainant wrote to Wyre Borough Council (the council) on 9 March 2010, with reference to a council lawnmower. She gave its registration plate details and requested the following information in relation to that specific lawnmower, and also to all other similar mowers owned or operated by the council:

"Please provide the relevant job sheets and locations of grass cutting or all other operations by these types of mower on the following dates. Can you please keep the detail of PN08 SUY separate from the other mowers?"

1/ Wednesday 06 January 2010.

2/ Thursday 21 January 2010.

3/ Thursday 04 February 2010.

4/ Thursday 25 February 2010.

5/ Thursday 01 March 2010.

6/ Monday 08 March 2010.

Please also provide all evidence of accreditation, licensing, insurance and all other relevant competences of the driver of Hayter mower PN08 SUY at the precise date and time of 11:45 am on Tuesday 30 June 2009. Please remove all data of a personal nature as I am not interested in any of that. However I do require that evidence is provided to demonstrate that the information being supplied in relation to this part of the request is related to the actual driver on 30 June 2009 at 11:45 am."

5. The council responded on 12 April 2010. It stated that none of its Hayter machines were used until 15 March 2010, and that work sheets for this type of work were not kept. Details of the council's motor vehicle insurance policy were disclosed, clarifying that this is a fleet policy so individual vehicles are not itemised and are not needed to be. The council requested clarification as to what the complainant meant by 'accreditation', explaining that all mower drivers hold valid driving licences. It declined to provide a copy of an individual's driving licence as that would be personal data and disclosure would be a breach of the data protection principles. It explained that it was unable to confirm the precise date and time of 11:45 am because no detailed records are held.
6. There was an exchange of several emails between the complainant and the council on 13 April 2010, during which the complainant noted that she was 'slightly perturbed' to note that the date of renewal of the insurance document was the same date as her accident involving a council lawnmower (the council replied, explaining that this was a

coincidence). The exchange also included the submission of a second request, for:

"The insurance schedule provided yesterday as attached and dated 30 July 2009 was indicated as schedule number 09.

Please provide under the Freedom of Information Act schedules 5, 6, 7 and 8 of the equivalent and previous policies?" [sic]

7. The complainant requested an internal review on 27 April, explaining that various training records, and other documentation she had requested, had not been provided, and she also requested further supporting information related to the council's 12 April 2010 response.
8. The council responded to the second request on 28 April, disclosing five pages of insurance schedules for 2008/9 and explained that the schedule number '09' refers to the policy year, ie 2009, and the schedule itself runs to five pages, numbered 1 of 5, 2 of 5, etc. The council explained that it appeared the complainant might have misunderstood the schedule numbering system, and requested clarification from her if she wanted something other than schedules for 2008/9.
9. The council responded to the complainant's request for an internal review on 24 May 2010, giving its view that her requests were:

"[...] obsessive, designed purely to harass council officers and impose a burden on [council] resources [...] your demands have been increasingly unreasonable and you have repeatedly been disrespectful to council officers and questioned their integrity. This has been annoying and upsetting at the least, and in some cases distressful for staff [...] we are now using the exemption for vexatious requests under section 14(1), Freedom of Information Act to end this matter. Don't expect any acknowledgements or responses to your future correspondence."

The Investigation

Scope of the case

10. On 13 July 2010 the complainant contacted the Commissioner to complain about the way her requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- She expressed considerable surprise at the council's refusal of her requests, and its characterisation of them. She stated that she felt insulted by the council "*unilaterally call[ing] me insulting names*" [understood to be a reference to the council's use of the terms 'obsessive', 'unreasonable' and 'disrespectful'].
 - Until 24 May, her dealings with the council had been responded to with very little problem. She had had no contact with it for almost a month, prior to receiving the internal review letter refusing her requests as vexatious.
 - She voiced her suspicion that the refusal, dated 24 May 2010, coincided with the publishing of an uncomplimentary piece about the lawnmower accident in the local press on the same date.
 - She is still awaiting the internal review requested for the first request, and a full response for request two.
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
12. The Commissioner has consequently examined the council's arguments in support of its decision to refuse the complainant's requests as vexatious, under section 14(1) of the Act.

Chronology

13. The Commissioner acknowledged the complaint to the complainant, and wrote to the council on 31 August 2010, requesting its arguments and supporting evidence for its position. This was first received on or around 15 September 2010, but due to technical difficulties it was re-sent on 28 September 2010.
14. The Commissioner wrote again to the council on 4 October to acknowledge safe receipt of the council's submissions, indicating that the material provided was not considered sufficient to support the council's position. The council was referred to the Commissioner's guidance on vexatious requests¹ and further arguments and supporting evidence was requested.
15. The council responded on 27 October 2010. It provided further arguments in support of its position. The council's arguments also made reference to the complainant's fiancé, who had also had requests for

¹ See

http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

16. The Commissioner wrote to the complainant on 23 December 2010. He referred her to the guidance available on his website (and referenced, above) and invited her to submit a response based on the five tests in that guidance. He pointed out that the guidance made reference to several of the same terms used by the council which she had found insulting, and that this should be the proper context in which to consider the terms used in the council's response.
17. The complainant responded in early January 2011. She expressed her view that the validity of any insurance documents was a legitimate concern, and her suspicion that an attempt to backdate the insurance to the material date of her accident had taken place. This was, in effect, one serious purpose for her request. She disputed any claims that her dealings with the council could be characterised as disrespectful, or any of the other terms applied.

Analysis

Substantive Procedural Matters

Section 14

18. 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:
 - whether compliance would create a significant burden in terms of expense and distraction
 - whether the request is designed to cause disruption or annoyance
 - whether the request has the effect of harassing the public authority or its staff
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - whether the request has any serious purpose or value

19. The council's arguments are based on two grounds:
 - (i) The complainant's fiancé has also submitted related requests. His requests were refused as vexatious, and they are working together. Therefore, her requests must also be vexatious.
 - (ii) The complainant's own dealings with the council suggest a similar pattern of behaviour and attitude to that of her fiancé, such that there was some doubt that she had submitted the requests independently of him. This led the council to conclude that her requests should be considered vexatious in their own right.
20. Ground i) had argued that the complainant's fiancé was obsessive, because he had requested similar and related information to the complainant, at a similar time. Further, that his dealings with other public authorities, requesting information to pointless and burdensome levels of detail while also being unnecessarily confrontational and aggressive, were considered harassing and consequently unacceptable. It had concluded that a similar pattern was being followed in his dealings with it.
21. The arguments for i) have been considered in the Commissioner's case reference FS50325638, which was a case brought by the complainant's fiancé about the refusal of his requests as vexatious. In that case, the complaint was upheld and the Commissioner found that the council had incorrectly refused the requests as vexatious. It therefore follows that ground i) above fails in the present case. There can be no justification for 'refusal by association' where the grounds for the refusal of the associated requests have not been upheld.
22. The council argues that the complainant is beginning to follow a similar pattern to her fiancée, in that she has requested an internal review despite there being no apparent merit to such a review, made a second request for further detail, with no apparent justification, and her language in her dealings with the council is tending to become confrontational. It has voiced its suspicion that, because the complainant's correspondence bore similarities to that drafted by her fiancé in case reference FS50325638, it might therefore be argued to have actually been written by him.
23. The Commissioner recognises that it is not clear that the council was aware of the close relationship between the complainant and the other requester (her fiancé), at the time it was dealing with these requests, and that it may have formed the view that there was a degree of collusion between the two, which it characterised as vexatious. (A local press cutting about the complainant's accident makes the relationship

clear. This press cutting is dated the same day as the council's refusal of the internal review as vexatious, a matter which the complainant regards as significant). The Commissioner notes, however, that the refusal under section 14 was issued on the same date that her fiancé's requests to the council were also refused as vexatious, following some (unsuccessful) involvement of a neighbouring council. He understands this to have been the reason for the refusal, not the press report.

24. In response to the Commissioner's enquiries, the council provided its arguments in justification of its application of section 14 of the Act to the complainant's requests. The Commissioner will consider those arguments in the context of the five tests listed at the head of this section, as far as possible, below.

Would compliance create a significant burden in terms of expense and distraction

25. The council states that complying with these requests imposes a significant burden on council officers' time. It offers no evidence to support this statement, however, and appears to rely on the combined effect of the complainant's and her fiancé's requests. As has been considered, above, the Commissioner does not consider this approach valid in the circumstances.
26. Further, the council has not produced evidence to show how the extent of the workload, or the degree of distraction, caused by the combined requests of the complainant and her fiancé, could reasonably be characterised as burdensome.
27. Finally, the council has offered no evidence or explanation as to how the complainant's two requests, by themselves, might have constituted the sort of burden it describes. The two requests described at paragraphs 4 and 6, above, do not appear to the Commissioner to contain any inherently burdensome elements. Consequently, the Commissioner gives no weight to the council's statement that compliance would create a significant burden in terms of expense and distraction.

Are the requests designed to cause disruption or annoyance

28. The council draws the Commissioner's attention to the way the complainant's 27 April 2010 request for an internal review is drafted. The request contains three paragraphs which explain her dissatisfaction with the response received to-date, but which also contain matters which may objectively be interpreted as new requests for information:

"I have been supplied with no training records, Health and Safety training records, lawnmower driving and operational training records, risk assessment training for the mowers or evidence of the

knowledge of these as regards the operator on 30 June 2009. I also require evidence that the driver was fully licensed and insured for the lawnmower on that day. Please note that I don't require personal information but I do require evidence that the driver was licensed and insured in full. Please also produce records of safety checks made on the mower before its use on 30 June 2009. I don't require certificates I just require records that prove that all of the aforementioned was undertaken. Clearly there is no point doing any of this if the fact that it occurred is not documented. For instance how would these undertakings be proven to external or independent outside bodies such as the Health and Safety Executive? Your insurer would also have an interest in such records.

[...] Please supply evidence of any sanctions placed upon these mowers as a result of the accident on 30 June 2009 or any other occurrence. Have there been any new risk assessments undertaken or any limitations or restrictions put on the use of the mowers at any time. For instance has there use been "banned" at any time. If this is the case please produce all internal documentation of relevance to all of this. In particular I request any sanctions or restrictions placed on the mowers at the direction of your insurer if any."

29. Some of this comment may reasonably be understood to be clarification of the sort of information which the complainant had expected to receive in response to her initial request, and the Commissioner would suggest that this might be expected to assist a public authority in conducting an internal review. It might also, however, be taken to be a response to the public authority's requests for clarification of her use of the term 'accreditation', in which case it might be seen that any request for an internal review would be premature. He agrees that the references to, for example, safety checks, sanctions, new risk assessments, limitations and restrictions or 'bans' subsequent to 30 June 2009, will be likely to constitute a new request, for information not previously described.
30. The council criticises the complainant's use of the internal review in this fashion. It argues that she is familiar with the freedom of information (FOI) process, having made "*plenty of FOI requests before*" and that this approach is not simply due to unfamiliarity with the internal review process. It observes that it had requested clarification from the complainant at an earlier stage, but had not received any. Therefore, it argues, this broadening of the scope of the request at the internal review stage should be characterised as "*incongruous*".
31. It questions why, if the complainant intended this to be a new request, she had also requested an internal review and it concludes that it is because "*it was a deliberate attempt to harass council officers. This is a*

premeditated attempt to escalate the request to internal review status to cause maximum mayhem." It comments on the *"deviousness"* of the implication, to any officer conducting an internal review, that this detailed information had been requested all along.

32. It concludes that the complainant, acting in collusion with her fiancé, seeks to *"unjustifiably exploit the FOI system in order to create maximum havoc. The FOI officer and other council officers have needlessly spent more time on these two people over the past two months than all the other FOI requests combined"*
33. The Commissioner recognises that the council may indeed have an arguable point, but in choosing terms such as *"maximum mayhem"* and *"maximum havoc"* the council appears to describe a scenario in which its functions are reduced to chaos by dint of the receipt of a series of (fairly routine) FOI requests and associated correspondence. The Commissioner does not find this sort of characterisation helpful, not least as the public authority also criticises the complainant's use of what it terms as 'provocative' language. This gives rise to the impression that the council is resorting to somewhat hyperbolic language of its own, to bolster its argument in the absence of clear or objective evidence for its case.
34. The Commissioner also notes that 'the past two months' alluded to at paragraph 32, above, also covers the time during which the Commissioner's investigations had commenced. The council seems to be arguing, at least partly, that, by exercising their right to bring a complaint to the Commissioner, the complainants had created more burden for the council in responding to the Commissioner's investigation, thereby confirming the very behaviour which had led it to refuse the requests which, in turn, led to the submission of the complaint to the Commissioner. The Commissioner does not consider it helpful to address that circular argument any further.
35. The council's arguments may be summarised as being that the complainant was being unreasonable in failing to accept the response she had been given, and additionally unreasonable in submitting subsequent requests and, in particular, in conflating those requests with her request for an internal review. Finally, that her complaint to the Commissioner, particularly when considered in association with a related complaint from her fiancé, suggests a deliberate use of the FOI system to cause disruption to the council.
36. The Commissioner observes that the FOI process can often be an iterative one. The response to a request for information gives rise, in the applicant's mind, to other areas of interest or associated requests. This is entirely reasonable and not unexpected and the Commissioner would

advise considerable caution in ascribing vexatious motives to such an approach by an applicant. In this case, while the council has explained that it believes the complainant's actions are indeed vexatious, it has provided little other than anecdotal evidence and supposition to support its case that the FOI process has been deliberately subverted in this way, to cause disruption or annoyance.

37. The Commissioner notes that the exchange of correspondence between complainant and council, from initial request to the refusal under section 14 of the Act took approximately 11 weeks. He also observes that the correspondence from the complainant which it has provided to the Commissioner for his investigation is neither substantial, nor particularly frequent. Consequently, he is not persuaded that the council has provided cogent evidence that the complainant designed the requests to cause disruption or annoyance, nor that the request might have formed the pretext on which the complainant could disrupt or annoy the council. Consequently he gives no weight to this factor.

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

38. The council confirms that its staff felt harassed and distressed by their dealings with the complainant and what it terms her 'abusive' and 'provocative' language. It cites one specific example of where the complainant *"hurled insults such as 'I wasn't born yesterday'"* and a second where the complainant sent *"a very abusive email that she smells something very peculiar.. and then goes on to barrack the FOI officer alleging the council has backdated its insurance policy and accuses it of deliberately falsifying records [...]"*. This can be found in the exchange of emails on 13 April 2010 referred to at paragraph 6, above. The Commissioner has examined that exchange, to understand the context:
39. On 13 April, at 09:47 the council emailed the complainant to reassure her about the coincidence of the renewal date of its insurance and the date of her road accident, stating:

"I have spoken to the manager who arranges the council's vehicle insurance. He tells me that it is a coincidence that the date of the accident is the date of renewal. The council has over 80 vehicles to insure and it would be unthinkable that we would risk prosecution by not making sure we are properly covered."

The complainant replied at 14:21 stating:

"I wasn't born yesterday. And I don't know exactly what WBC would do or risk be it unthinkable or otherwise. However I intend to find

out. Some coincidence that though [name] and the date was backdated from 31 July 2009." [sic]

(The Commissioner observes that the insurance schedule provided to the complainant is dated 30 July 2009, but refers to the commencement of the insurance as being 30 June 2009).

A later email from the complainant, at 17:32 on the same day, begins:

"I smell something very peculiar in all of this [...]. I have been told on good authority that you can never date policy changes back. I am also told that if this did happen the culprit would be violating adjuster agreements, and be guilty of committing unfair claims practices. The fact is that NO ! Of course you can't "backdate" insurance.[...] Clearly, I am advised, insurance will NOT backdate and if it is backdated to the time of an accident it's against the law. [...] However the facts of the policy schedule provided present serious suspicion of the opposite and otherwise. The signature on the policy is dated 30 July 2009 and my claim was presented around the middle of July 2009. Then the policy schedule was backdated to the date of the accident of 30 June 2009[...]"

40. These are the relevant elements of the exchange which the council characterises as 'hurled insults' [14:21 email]; 'very abusive'; 'barrack[ing] the FOI officer' and 'accus[ing] it of deliberately falsifying records' [17:32 email].

41. The Commissioner is mindful of the comments of the Information Tribunal in the case of *Jacobs v IC* (EA/2010/0041)² which stated, at paragraph 27:

"Although it is relevant to consider the impact that the Request and associated communications may have on those to whom they are addressed, the Tribunal should not be over-protective of them. Public authorities and the individuals representing them must expect to be exposed to an element of robust and persistent questioning, sometimes articulated in fairly critical tones. And the test of when a dialogue develops to the stage where it may be said to have become vexatious will be an objective one, not based on the particular sensitivities of the individual or individuals dealing with the person making the request. This particular factor will carry weight in the overall assessment only if distress or irritation would

² See

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20(w).pdf)

be caused to a reasonably calm, professional and resilient officer of a public authority, with no improper motive (such as a wish to avoid the disclosure of information that will disclose his or her wrongdoing or incompetence)."

42. As at paragraph 33, above, the Commissioner cannot escape the impression that the council has resorted to somewhat overblown language of its own in its characterisation of the complainant's correspondence, in order to reinforce its point. The Commissioner would agree that the extracts of the complainant's correspondence, above, might reasonably be classed as *"robust and persistent questioning, sometimes articulated in fairly critical tones"*. He is not persuaded that they constitute abusive, barracking, or accusatory language, still less *"hurled insults"*.
43. It is clear to the Commissioner that there is a considerable degree of antipathy between the council and the complainants and the Commissioner will not speculate on its origins, beyond noting that the council draws heavily on the complainant's fiancé's history of dealings with other public authorities in the region, some of which have been refused as vexatious by those other public authorities. The Commissioner is concerned that this might have coloured the council's approach to either the complainant or her fiancé. To the extent that the council's staff experienced genuine harassment or distress, the Commissioner cannot ignore the possibility that at least some of that distress might have arisen from *"the particular sensitivities of the individual or individuals dealing with the person making the request"* that is, from the council's perception of these two individuals, and not directly from their actions or correspondence in these two related cases.
44. He finds the council's arguments about the complainant's use of language to be overstated and, while he accepts that the council's staff may have felt genuine harassment or distress, he is not persuaded that this resulted directly from the complainant's requests or correspondence, and that therefore the requests have not been shown to 'have the effect of' harassing the public authority or its staff. The council's approach risks characterising the requester, not the request, as vexatious. Consequently, the Commissioner gives no weight to this factor.

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable

Do the requests have any serious purpose or value

45. The council does not seek to argue that the complainant's requests are obsessive, and accepts that she had a 'degree of legitimacy' to her

requests by virtue of her ongoing claim relating to her road accident. This may be seen as acknowledging that the first request has some serious purpose or value, however the council does argue that the process of FOI is not the appropriate forum to pursue the complainant's arguments about what she perceives as 'backdating' of the council's insurance schedule.

46. The Commissioner would agree that, having obtained a copy of an insurance schedule which has raised doubts in the complainant's mind, there may be means more appropriate than FOI through which to air her concerns including, for example, an approach to the insurance underwriters directly. Having aroused her suspicions, whether justified or not, it does not appear to the Commissioner however, that it would be manifestly unreasonable for the complainant to make further use of the FOI process in order to obtain additional evidence relating to those suspicions.

Summary

47. The Commissioner has considered the five tests which are considered applicable in the circumstances. The first four are those which may show the degree of unreasonable behaviour, or adverse effect on a public authority as a result of the requests. Having examined those factors, the Commissioner has not given them any weight.
48. It is noted that the last test, "do the requests have any serious purpose or value" is the one which is most likely to weigh in the balance in the complainant's favour and which may therefore outweigh the combined effect of the other factors. As the Information Tribunal in the case of *Coggins v IC (EA/2007/0130)*³ stated, at paragraph 20:

"the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious"

49. In this case, however, the Commissioner does not find that the council has successfully argued its case for the application of the first four tests, and therefore it is not necessary for there to be any counterbalancing argument on the complainant's side of the balance. As the Act is normally considered to be motive-blind, the Commissioner therefore concludes that it would not be appropriate or necessary to give any real consideration to the possible motives of the complainant, or any serious purpose or value behind her requests.

³ See <http://www.informationtribunal.gov.uk/DBFiles/Decision/i119/Coggins.pdf>

50. The Commissioner is therefore satisfied that, on the evidence which has been provided to him, the public authority has not shown sufficient reason to uphold its refusal of the complainant's requests as vexatious. He therefore concludes that the council has incorrectly applied section 14(1) of the Act in refusing the complainant's requests as vexatious.

Procedural Requirements

Section 1

51. The council responded to the complainant's first request by disclosing some information, and requesting clarification of other elements of the request. No clarification was received until the time of the request for an internal review.
52. The council responded to the complainant's second request on 28 April 2010, disclosing a copy of the insurance schedule for 2008, namely the schedule number '08' and explained how this numbering system applied to the insurance schedules. It requested clarification if the complainant wanted something other than the schedules for 2008-2009.
53. The complainant has indicated to the Commissioner that she wishes to receive the previous year's schedules (ie those for 2005, 2006 and 2007), but has not been able to show that she has clarified her requirements to the council.
54. Under section 1(3) of the Act, a public authority is not obliged to comply with section 1(1) of the Act until it has received any clarification it reasonably requires in order to identify and locate the information requested.
55. The complainant's intended meaning of the term 'accreditation' in her first request is not clear, given the council's explanation that its lawnmower drivers are suitably licensed. There is also some ambiguity in the wording of the second request, when taken with the council's knowledge of how the numbering of the insurance schedules worked, which suggests that the complainant did not, at that time, understand the relevance of the numbering system used for the insurance schedules.
56. The Commissioner therefore agrees that it was reasonable for the council to request clarification of what the complainant required or expected in response to the requests. Clearly there is no advantage in spending time and public funds in locating and extracting information, for example previous years' policy schedules, from its records, if this is not what the complainant anticipated receiving. In disclosing the schedule number 08 while also requesting further clarification, its response can be seen to be helpful to the complainant in showing her

how the numbering system works, and therefore in assisting her to decide whether she required any further information for the remaining schedules.

57. Under section 10(6) of the Act, the time for compliance with a request is 20 working days after a public authority has received the clarification it has reasonably requested under section 1(3) of the Act. The complainant has not shown that she provided the clarification for the second request, therefore the Commissioner finds no breach of section 1 in respect of insurance schedules 5,6 and 7 requested on 13 April 2010.
58. In respect of the first request, the complainant listed (in her request for an internal review) various pieces of documentation she had not received, some of which might be seen to be clarification of her first request. By incorrectly refusing the request under section 14(1) of the Act, the council has therefore breached section 1(1)(a) in failing to confirm or deny whether it holds information of the clarified description in the complainant's 27 April request for internal review.

Section 10

59. The complainant submitted her first request on 9 March 2010, and received a response from the council on 12 April 2010. This is a period of 22 working days. The council has therefore breached section 10(1) of the Act in failing to comply with section 1 of the Act within 20 working days.

Section 17

60. In failing to issue a notice refusing the request under section 14(1) of the Act, within 20 working days of the request, the council breached section 17(5) of the Act.

The Decision

61. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
- The public authority incorrectly refused the request under section 14(1) of the Act.
 - The public authority breached section 1(1)(a) in failing to confirm or deny whether it held information of the clarified description in the complainant's request.
 - The public authority breached section 10(1) in failing to provide its response within 20 working days.

- The public authority breached section 17(5) in failing to issue a refusal notice stating its reliance on section 14 of the Act, within 20 working days of the request.

Steps Required

62. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Provide a response to the complainant's 9 March 2010 request which complies with the requirements of section 1 of the Act, taking into account the clarification given in her request for internal review of 27 April 2010.
63. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

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

Right of Appeal

65. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

66. 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.
67. 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 25th day of May 2011

Signed

**Andrew White
Group Manager
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."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

"The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations."

Section 10(5) provides that –

"Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner."

Section 10(6) provides that –

"In this section –

"the date of receipt" means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

"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."

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

"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 a previous request and the making of the current request."