

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 31 May 2011

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
England  
B1 1BB

### Summary

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The complainant asked Birmingham City Council (the council) for information about housing benefit payments. The council provided the complainant with some information but refused to provide everything that had been requested. This refusal was on the basis of the exemption contained at section 12 as to provide the requested information would exceed the fees limit of £450. The Commissioner finds that the council was correct to rely on section 12 and does not require it to take any further action.

### 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.

### The Request

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2. On 8 January 2010 the complainant made the following request:

*"I refer to the provisions in the Housing Benefit Regulations 2005 for benefit to be paid in certain circumstances in respect of two properties. Specifically, I refer to regulation 7(6) and 7(8).*

*Please provide details of any such awards of housing benefit during/overlapping the year of 2009 i.e. amounts, duration and grounds of award.*

*Please also identify any such awards whereby benefit was assessed as payable in respect of temporary accommodation provided by the council.*

*I am obviously content to receive this information with the names/addresses of the applicants redacted."*

3. The council responded on 3 February 2010 in which it provided information about benefit that was currently being paid on two homes and refused to provide any further information on the basis of the exemption contained at section 12 of the Act.
4. There was then a chain of correspondence between the complainant and the council, resulting in the complainant requesting an internal review on 17 June 2010.
5. The council responded with the results of the internal review it had carried out in a letter dated 29 July 2010. The council upheld its application of section 12.

## **The Investigation**

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### **Scope of the case**

6. On 21 September 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 the council's application of section 12
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### **Chronology**

8. On 15 February 2011, the Commissioner contacted the council and asked it to provide further clarification of the costs involved in locating, retrieving and extracting the information requested by the complainant.
9. In a letter dated 21 March 2011, the council informed the Commissioner that it did not have a reporting mechanism which would enable it to extract further information from its reporting system. The council explained:

*"The reporting mechanisms for the Benefit Service are predominately set by the data required by the Department for Work and Pensions. We are not required to maintain data regarding the award of benefit on two homes and as such we are currently unable to extract this type of data*

*from our databases without creating new parameters and reporting mechanisms. Equally, although we place an alert on a claim where the benefit has been paid on two homes, the system does not allow us to put period dates on these alerts. As they have subsequently been removed you are asking for information which is no longer available in the system."*

The council went on to say:

*".....a request has been made to our system providers to provide a definitive costing for creating a non-standard bespoke report development. To date this has not been received."*

10. The Commissioner asked further questions of the council in a letter of 31 March 2011.
11. The council telephone the Commissioner on 31 March 2011, during this telephone call the council explained that it put alerts on claims being paid on two homes but only while two payments were being made, once the two payments stopped the alert was removed and the council were unable to retrieve such alerts. To enable it to retrieve this information, the council stated that it would have to request a bespoke reporting mechanism from its system providers. The council agreed to obtain a quote and provide details of the quote to the Commissioner.
12. The council provided a further response in a letter dated 20 April 2011. In this response the council stated the following:

*".....our database no longer holds information relating to benefit being paid on two homes.....This is because this type of payment could only be made in specific circumstances.....Once the relevant alert is removed from the claim then there is no longer any access to that data."*

The council also provided the Commissioner with the quote it had received from its system provider to develop a bespoke report. The cost of developing the report would be £1780.

## **Analysis**

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### **Exemptions**

#### **Section 12**

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

*i. '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.'*

14. Accordingly, section 12 provides that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'), the wording of which is provided in the legal annex to this Notice. A public authority may only take into account the cost of determining whether it holds the information requested, locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £450 for all public authorities (other than central government) and equates to 2½ days' work (18 hours) at a rate of £25 per hour.
15. In the present case the Commissioner considers that the purchasing of a bespoke reporting system represents time spent on locating and retrieving the requested information, and so can be considered when estimating the total time that would be spent for the purposes of the section 12 cost ceiling.
16. The Commissioner has inspected the quote provided by the council. The cost of bespoke report would be £1780.
17. The council also provided the Commissioner with a breakdown of the costs already involved in dealing with the request and in providing the information it had been able to provide as being £157.50, along with a further estimate of how long it would take to disseminate any further information retrieved by the bespoke report, if purchased, as being at least £57.50. The council estimated that the total cost of complying with this request would be £1995.
18. Having considered the above information, the Commissioner is satisfied that the cost of locating, retrieving and extracting the requested information would exceed the appropriate limit, and that section 12(1) was engaged.

## **Section 16 'Duty to provide advice and assistance'**

19. 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”.

20. Section 16(2) provides that:

“Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case”.

21. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the section 45 Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000” recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit, and also consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.

22. The Commissioner notes that the public authority had provided the complainant with the information it had been able to retrieve, that being details of two payments being made at the time of the request, within the fees limit. The Commissioner therefore considers that the council fulfilled the requirements of section 16(1).

## **The Decision**

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23. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, and that it was justified in withholding the information by reference to section 12 (1) of the Act.

## **Steps Required**

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24. The Commissioner requires no steps to be taken.

## Right of Appeal

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25. 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](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 31<sup>st</sup> day of May 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### **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.”

### **The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (No. 3244)**

#### **The appropriate limit**

**Regulation 3** provides that –

“(1) This regulation has effect to prescribe the appropriate limit referred to in ... section 12(1) and (2) of the 2000 Act.

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

#### **Estimating the cost of complying with a request – general**

**Regulation 4** provides that –

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request–

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or...

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

- (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
- (4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour."

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

#### **Regulation 5 provides that -**

"(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

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

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

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

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a



bank holiday under the Banking and Financial Dealings Act 1971[4] in any part of the United Kingdom.”

### **Section 16 - Duty to provide advice and assistance**

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

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.