

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 18 October 2011

**Public Authority:** The Common Council of the City of London  
**Address:** PO Box 270  
Guildhall  
London  
EC2P 2EJ

### Summary

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The complainant requested the Common Council of the City of London ('CoL') to release information relating to its FOI function and how its requests have been handled over the last 2 years. The CoL responded refusing to provide the requested information under section 12(4)(b) of the Act. As the complainant remained dissatisfied, he approached the Commissioner. The Commissioner has given the matter careful consideration and he is satisfied that section 12(1) applies by virtue of section 12(4)(b) of the Act to the request. He therefore requires no further action to be taken.

### 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. This Notice should be read in conjunction with two other Decision Notices the Commissioner has issued on the CoL case references FS50353495 and FS50353385.
3. In these Notices the Commissioner considered the application of section 12(1) by virtue of section 12(4)(b) of the Act to nine other requests the CoL had received in close succession to the request the subject of this Notice. In both Notices he concluded that the requests were or, at least for the purposes of section 12(4)(b), appeared to have been submitted

by different applicants acting in concert or pursuance of a campaign and could be aggregated by the CoL for the purposes of calculating the cost of compliance under the Act.

4. This Notice addresses a later request the CoL received from another applicant who is or, at least for the purposes of section 12(4)(b), appears to be acting as part of the same campaign. Elements of the Commissioner's rationale for upholding the application of section 12(1) by virtue of section 12(4)(b) outlined in his first Decision Notice, case reference FS50353495, are relevant to this case. The Commissioner has therefore attached a copy of this decision as an Annex to this Notice. It will be referred to as Annex C, as the Commissioner's decision for case reference FS50353495 has two Annexes attached to this Notice, which are already referred to as Annex A and Annex B.
5. For clarity, the Commissioner's Decision Notice for case reference FS50353385 is not attached as a separate Annex to this Notice. This is because it is not required for direct reference in order to follow the Analysis section of this Notice.

## The Request

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6. The complainant contacted the CoL on 9 September 2010 to request the following information:

"Please provide the text of all FOI requests received and replies given, in the past 2 years.

For each FOIA request please include:

- Which exemption (if any) applied to that request.
- Whether an internal review took place and if so what was its conclusion.
- Name of the staff member who replied to the request.
- Name of the staff member who conducted the internal review (if any).
- Internal and external communications (emails, correspondence, phone notes) concerning the FOIA request.
- Details (agenda, minutes, notes, drafts, papers, attendees, time and location) of any meeting held concerning the FOI request."

7. The CoL responded on 5 October 2010 refusing to provide the requested information under section 12(4) and 14(1) of the Act.

## **The Investigation**

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### **Scope of the case**

8. On 7 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner the CoL's refusal to provide the requested information under sections 12(4) and 14(1) of the Act.

### **Chronology**

9. The Commissioner wrote to the CoL on 25 November 2010 to inform it that he had received a complaint from the complainant.
10. The Commissioner wrote to the CoL on 27 April 2011 to request further, more detailed arguments to support its application of section 12(4) of the Act.
11. The Council responded in part on 27 April 2011 forwarding copies of internal correspondence detailing how this request was handled.
12. The Council then wrote to the Commissioner on 13 June 2011 providing all outstanding information.

## **Analysis**

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### **Section 12 – cost of compliance exceeds the appropriate limit**

13. Section 12(1) of the Act 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. Subsection 12(4)(b) of the Act provides powers to the Secretary of State to make secondary legislation. The secondary legislation of relevance here is The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations"). Regulation 5(2)(a) of these Regulations states that two or more requests for information 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,
- can be aggregated when estimating the cost of compliance.
15. The Regulations provide that the cost limit for local authorities is £450. This must be calculated at a rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request or two or more requests made by the same person or different persons acting in concert would exceed 18 hours, or £450, section 12 provides that the request may be refused.
16. Section 12 of the Act provides an exclusion from complying with a request for information. It is not subject to a public interest test. This means the cost limit can be relied upon irrespective of whether the public interest would have favoured the disclosure of the information.
17. For the Commissioner to agree that the CoL can aggregate the costs of complying with the request the subject of this Notice with the eight requests referred to in his Decision Notice for case reference FS50353495 (Annex C) and the request considered in his Decision Notice for case reference FS5035385, the CoL must demonstrate that:
- a) the complainant and the other applicants whose requests have been aggregated appear to be acting in concert or in pursuance of a campaign;
  - b) the requests aggregated are for the same or similar information;
  - c) they were received by the CoL within a 60 working day period; and
  - d) that the estimated cost of compliance exceeds the appropriate limit of £450.00.
18. The Commissioner will now consider each of these elements in turn.
- Do the complainant and the other applicants whose requests have been aggregated appear to be acting in concert or in pursuance of a campaign?*
19. As stated above the CoL considers the complainant is part of the same campaign addressed in the Commissioner's Decision Notices for case references FS50353495 and FS5035385. The CoL stated that although this request seems to concentrate on its FOI function, how requests have been responded to and how internal reviews have been carried out, it considers there is evidence to suggest that this request is concerned with the handling of requests relating to COSREC.
20. The Commissioner has given this matter careful consideration. He is satisfied that there is sufficient evidence available to demonstrate that

on the balance of probabilities the complainant and the other applicants discussed in his Decision Notices for case references FS50353495 and FS50353385 are or, at least for the purposes of section 12(4)(b), appear to be acting in concert or pursuance of a campaign. He will now explain why.

21. The blogs referred to in Annex B of the Commissioner's Decision Notice for case reference FS50353495 (Annex C) strongly suggest that the complainant and the other applicants are or, at least for the purposes of section 12(4)(b), appear to be linked to a wider campaign. The request the subject of this Notice is very similar to the request submitted by 'Applicant three' on 15 August 2010, referred to in Annex A of the Commissioner's Decision Notice for case reference FS50353495 (which was also the subject a further Decision Notice the Commissioner issued on the CoL for case reference FS50353428). Both requests ask for information relating to the CoL's FOI function and appear to result directly from the first blog in Annex B, believed to be dated 31 August 2010.
22. As already addressed in paragraph 22 of the Commissioner's Decision Notice for case reference FS50353495 (Annex C), the complainant and the other applicants all use the What Do They Know website and submitted the requests via this site. As all requests made via this site are available to other users to view, the Commissioner considers it is reasonable to state that the complainant and the other applicants would have been aware of each others requests and what information had already been requested from the CoL. The nine requests discussed in the Commissioner's Decision Notices for case references FS50353495 (Annex C) and FS50353385 and the request the subject of this Notice were all made to the CoL in close succession. The Commissioner is of the view that these factors strongly suggest that the complainant and the other applicants were or, at least for the purposes of section 12(4)(b), appear to be operating as part of a wider campaign targeted at any public authority in the UK which has granted mandatory or discretionary rate relief to COSREC.

*Are the requests for the same or similar information?*

23. Eight of the requests referred to in the Decision Notice for case reference FS50353495 (Annex C) and the request referred to in the Decision Notice for case reference FS50353385 quite obviously seek access to the same or similar information. All refer to COSREC and request whether directly or indirectly information relating to the CoL's decision to grant mandatory rate relief to this organisation.
24. The only exceptions are the request the subject of this Notice and the request submitted by 'Applicant three' on 15 August 2010 outlined in

Annex A, attached to the Notice for case reference FS50353495. Although the wording of these two requests alone may suggest that they are solely concerned with how the FOI function operates and how internal reviews are carried out, the first blog of Annex A (attached to the Notice for case reference FS50353495) strongly suggests otherwise.

25. As stated in paragraph 29 of the Commissioner's Decision Notice for case reference FS50353495 (Annex C), this blog refers to concerns about the handling of internal reviews at the CoL, in particular, any reviews carried out by the legal department on requests for information relating to its decision to grant COSREC mandatory rate relief when this department created this information or made the decision to grant the award to COSREC. The Commissioner notes that this blog is anonymous. However, he considers it is more than mere coincidence that two FOIA requests for this type of information were later submitted to the CoL.

*Were the requests received by the CoL within 60 consecutive working days?*

26. The Commissioner notes that the earliest request aggregated by the CoL is dated 6 August 2010. The request the subject of this Notice is dated 9 September 2010 and was submitted to the CoL within 23 working days of the earliest request. It is therefore quite clear that this element of paragraph 17 above is met in this case.

*Would the cost to comply with the requests exceed the cost limit?*

27. Paragraphs 31 to 38 of the Commissioner's Decision Notice for case reference FS50353495 (Annex C) are applicable here.
28. For the reasons explained in paragraphs 13 to 25 above, the Commissioner is satisfied that the complainant is or, at least for the purposes of section 12(4)(b), appears to be part of the same campaign addressed in his Decision Notices for case references FS50353495 (Annex C) and FS50353385. He now only needs to consider whether the cost to comply with this request would exceed the appropriate limit.
29. As the Commissioner is satisfied that the complainant is or at least appears to be part of the same campaign, he is also satisfied that this request can be aggregated with the cost calculation outlined in his Decision Notice for case reference FS50353495 (Annex C). In his Decision Notices for case references FS50353495 and FS50353385 the Commissioner decided that the cost limit would be exceeded if the CoL were to comply with these nine requests. It follows that this request only adds to that cost calculation and that, overall, the cost to comply with all requests considered to be part of this ongoing campaign would exceed the appropriate limit prescribed by the Act.

## **Section 16 – advice and assistance**

30. Section 16(1) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
31. Whenever the cost limit has been applied, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code. If a public authority provides an indication of what, if any, information could be provided within the costs limit it will have complied with the requirements of the Code of Practice and therefore section 16(1) of the Act.
32. The Commissioner considers the CoL met its obligations under section 16 of the Act in this case. Section 16 states that advice and assistance should be provided only where it is reasonable to do so even if this is to just confirm to the complainant that it cannot identify any way of refining the request to fall within the cost limit or any specific information which would fall within the cost limit. In this case the CoL stated in its refusal notice to the complainant that it was unable to provide any advice and assistance as to ways to refining the request due to the broad nature and scope of the information requested and how this is held within the authority. The Commissioner therefore considers that the CoL complied with section 16 of the Act in this case.

## **Conclusion**

33. The Commissioner is satisfied that section 12(1) applies by virtue of section 12(4)(b) of the Act to the request. He is also satisfied that the CoL complied with section 16 of the Act.
34. As the Commissioner has concluded that section 12(1) applies by virtue of section 12(4)(b) of the Act in this case, he has not gone on to consider section 14(1) of the Act.

## **The Decision**

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35. The Commissioner's decision is that the CoL dealt with the request for information in accordance with the Act:

- it appropriately applied section 12(1) by virtue of section 12(4) of the Act; and
- adhered to the requirements of section 16(2) of the Act.

## **Steps Required**

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36. The Commissioner requires no steps to be taken.



## Right of Appeal

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37. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

38. 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.
39. 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 18th day of October 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Advisor  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### 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 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 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."

### **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 that authority to do so, to persons who propose to make, or to have made, request for information to it."

### **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."

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 11 October 2011

**Public Authority:** The Common Council of the City of London  
**Address:** PO Box 270  
Guildhall  
London  
EC2P 2EJ

### Summary

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The complainant requested the Common Council of the City of London (CoL) to release information relating to its decision to grant mandatory rate relief to the Church of Scientology Religious Education College (COSREC) which is held by its Audit Department. The Council responded refusing to comply with the request under section 12(4)(b) of the Act. As the complainant remained dissatisfied, he approached the Commissioner. The Commissioner has given the matter careful consideration and he is satisfied that section 12(1) by virtue of section 12(4)(b) of the Act applies to the request. He therefore requires no further action to be taken.

### 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. The complainant contacted the CoL on 9 August 2010 to request the following information:

"It... seems that the information provided to the City of London by COSREC at the time of its application for 80% relief from national non-domestic rate may have been incorrect, in that COSREC's claim to be a South Australian Charity was not factually correct.

My FOIA query is:

Does the Internal Audit Department intend to investigate this matter?

Please provide the Internal Audit Department's internal (within City of London) and external correspondence and emails relating to this matter, and any other records relating to this matter which exist within your department."

3. The CoL responded on 6 September 2010 refusing to provide the requested information under section 12(4) of the Act.
4. The complainant contacted the CoL on 7 September 2010 to request an internal review.
5. The CoL responded on 5 October 2010. It informed the complainant that it remained of the view that section 12(4) of the Act applied to his request.

## **The Investigation**

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### **Scope of the case**

6. On 7 October 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 whether the CoL had acted appropriately by refusing to respond to his request under section 12(4) of the Act.

### **Chronology**

7. The Commissioner wrote to the CoL on 25 November 2010 to inform it that he had received a complaint from the complainant.
8. The Commissioner wrote to the CoL on 27 April 2011 to request further, more detailed arguments to support its application of section 12(4) of the Act.
9. The Council responded in part on 27 April 2011 forwarding copies of internal correspondence detailing how this request was handled.
10. The Council then wrote to the Commissioner on 13 June 2011 providing all outstanding information.

## Analysis

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### Section 12 – cost of compliance exceeds the appropriate limit

11. Section 12(1) of the Act 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.
12. Subsection 12(4)(b) of the Act provides powers to the Secretary of State to make secondary legislation. The secondary legislation of relevance here is The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Regulations”). Regulation 5(2)(a) of these Regulations states that two or more requests for information 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,can be aggregated when estimating the cost of compliance.
13. The Regulations provide that the cost limit for local authorities is £450. This must be calculated at a rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request or two or more requests made by the same person or different persons acting in concert would exceed 18 hours, or £450, section 12 provides that the request may be refused.
14. Section 12 of the Act provides an exclusion from complying with a request for information. It is not subject to a public interest test. This means the cost limit can be relied upon irrespective of whether the public interest would have favoured the disclosure of the information.
15. For the Commissioner to agree in this case that the CoL can aggregate the costs of complying with the request the subject of this Notice and a further seven requests it received the CoL must demonstrate that:
  - a) the complainant and the other applicants whose requests have been aggregated appear to be acting in concert or in pursuance of a campaign;
  - b) the requests aggregated are for the same or similar information;
  - c) they were received by the CoL within a 60 working day period; and
  - d) that the estimated cost of compliance exceeds the appropriate limit of £450.00.
16. The Commissioner will now consider each of these elements in turn.

*Do the complainant and the other applicants whose requests have been aggregated appear to be acting in concert or in pursuance of a campaign?*

17. The information request the subject of this Notice has been aggregated with seven other requests the CoL received around the same time. One of the seven requests was an earlier request the complainant had made to the CoL on 6 August 2010. The six other requests were received within the same month from three other applicants.
18. The details of the seven other requests can be found in Annex A attached to this Notice. Only one of these seven requests has been referred to the Commissioner for consideration, this being the request dated 15 August 2010. This request is subject to a separate but similar investigation under case reference FS50353428.
19. The CoL informed the Commissioner that it considers the eight requests reasonably appear to form part of a campaign - itself part of a larger, ongoing campaign directed at the CoL since February 2009 and other public authorities across the UK. It stated that the eight requests were received within 17 working days and are aimed (directly or indirectly) at the same or similar information, namely the granting of mandatory rate relief to the building at 146 Queen Victoria Street occupied by COSREC and how this is managed. The CoL argued that these eight requests followed 18 other requests made to the CoL from another applicant aimed at the same issues. It considers these factors reasonably demonstrate that the complainant and the other three applicants are acting in concert targeting the CoL with requests about the same issue.
20. The CoL confirmed that it had undertaken its own research of various discussion forums available on the internet and felt there is convincing evidence to demonstrate that the complainant and the three other applicants are in contact with each other and have co-ordinated requests to the CoL in pursuit of their campaign against the CoL's decision to grant mandatory rate relief to COSREC. The CoL forwarded to the Commissioner various links to these forums as part of its response.
21. The Commissioner has given this matter careful consideration and he is satisfied that there is sufficient evidence to demonstrate that on the balance of probabilities the complainant and the three other applicants are, or at least appear to be for the purposes of 12(4)(b), acting in concert or in pursuance of a campaign. He will now explain why.
22. The Commissioner notes that the complainant and the three other applicants all use the What Do They Know website and submitted each of the requests being considered here via this site. This site provides details of all other requests made via this site to public authorities relating to the same topic, the name of these applicants and the

responses they received. The Commissioner considers it unlikely that the complainant and the three other applicants being considered here were not aware of the numerous other requests already made to the CoL relating to COSREC. The Commissioner considers that much of the information requested in these eight requests was the subject of other FOIA complaints under consideration by the Commissioner at the time they were made or related to information being considered by the Information Tribunal in the hearing of *Mr William Thackeray v Information Commissioner and the Common Council of the City of London (EA/2009/00958)*. He considers it is reasonable to assume that the complainant and the other three applicants were aware of this at the time they submitted their requests. The Commissioner also notes that the eight requests were made in close succession to the CoL. He is of the view that these factors strongly suggest that the complainant and the three other applicants are, or at least appear to be for the purposes of section 12(4)(b), operating as part of a wider campaign targeted at any public authority in the UK which has granted mandatory or discretionary rate relief to COSREC.

23. The Commissioner has reviewed the various discussion forums himself. Although many entries are anonymous, there are many blogs on these forums which strongly suggest the complainant, the other three applicants referred to in Annex A and possibly other individuals who have yet to refer a complaint to the Commissioner are, or at least appear to be for the purposes of section 12(4)(b), acting in concert or in pursuance of a wider campaign against the CoL and other public authorities which have granted rate relief to COSREC. The Commissioner has quoted a few of the blogs in Annex B attached to this Notice to demonstrate this point.
24. As many entries on these forums are anonymous, it is not possible to state beyond any doubt that the complainant and the other three applicants are linked to the wider campaign. However, the Commissioner is satisfied that these blogs demonstrate to a satisfactory degree that the complainant and the three other applicants are or appear to be acting in concert or in pursuance of a campaign. One blog clearly shows that the request dated 15 August 2010 from 'Applicant three' in Annex A resulted from that blog.
25. For the reasons explained above, the Commissioner is satisfied that there is sufficient evidence to demonstrate that the complainant and the three other applicants are or appear to be acting in concert or in pursuance of a campaign. He will now go to consider the remaining elements of section 12(4)(b) as detailed in paragraph 15 above.

*Are the requests for the same or similar information?*



26. The Commissioner considers the wording of seven of the eight requests quite obviously demonstrates that the complainant and the three other applicants are seeking access to the same or similar information. With the exception of the request dated 15 August 2010, which the Commissioner will address below, the requests specifically refer to COSREC and seek information relating to the CoL's decision to grant it mandatory rate relief. One in particular refers to another FOI applicant who had already submitted 18 FOI requests to the CoL relating to COSREC (request dated 14 August 2010 in Annex A).
27. As stated in paragraph 22 above, much of the information requested in these seven requests is information which was the subject of other complaints being considered by the Commissioner or the Information Tribunal at the time they were made.
28. Referring to the request dated 15 August 2010, while the wording of the request alone may suggest that it is solely concerned with the handling of internal reviews conducted by the CoL and makes no obvious link to COSREC or the CoL's decision to grant it mandatory rate relief, the first blog in Annex B strongly suggests otherwise.
29. This blog refers to concerns about the handling of internal reviews at the CoL, in particular, any reviews carried out by the legal department on requests for information relating to its decision to grant COSREC mandatory rate relief when this department created this information or made the decision to grant the award to COSREC. Again, the Commissioner notes that this blog is anonymous. However, he considers it is more than mere coincidence that an FOIA request for this information was later submitted to the CoL.

*Were the requests received by the CoL within 60 consecutive working days?*

30. The Commissioner notes that all eight requests were received by the CoL within a 17 working day time period. He is therefore satisfied that the eight requests can be aggregated on this basis.

*Would the cost to comply with the requests exceed the cost limit?*

31. As stated in paragraph 13 above, the CoL can legitimately refuse to comply with the eight requests, under section 12(1) by virtue of section 12(4)(b) of the Act, if it estimates that complying with all eight requests would exceed 18 hours or £450.
32. The Commissioner must determine whether he believes that the estimate provided by the CoL is reasonable. The issue of what constitutes a reasonable estimate was considered in the Information Tribunal case of *Alasdair Roberts v Information Commissioner*

(EA/2008/0050) and the Commissioner endorses the following points made by the Tribunal at paragraphs 9-13 of the decision:

- "Only an estimate is required" (i.e. not a precise calculation);
  - The costs estimate must be reasonable and only based on those activities described in regulation 4(3);
  - Time spent considering exemptions or redactions cannot be taken into account;
  - The determination of a reasonable estimate can only be considered on a case-by-case basis; and
  - Any estimate should be "sensible, realistic and supported by cogent evidence."
33. The above extract references regulation 4(3) of the Regulations referred to in paragraph 13 above, which states that the only activities that are allowed to be considered are those where it is:
- (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.
34. Initially the CoL estimated conservatively that it would take 44.5 hours to comply with these eight requests. During the Commissioner's investigation this estimate was reduced to 39 hours and 51 minutes. Again it stated that this revised estimate was a conservative estimate. It provided the following explanation and breakdown of this revised estimate:

***"CCS records [Comptroller and City Solicitors Department]:***

1. *Regarding my own calculations to search, locate and retrieve any information held, I note the Comptroller and City Solicitor's Department (CCS) has accumulated significant files as result of the campaign from [named redacted] and others (involving overlap and duplication), in addition to the files which were held regarding rate relief to COSREC.*

*At the time it was estimated that approximately 30 hard-copy file covers were held. i.e. there may be more than one physical "cover" relating to a legal file/file number. Estimated that it would take approximately 1 hour (on average in light of the various requests and information requested under each) to determine if the information is held, locate the information, retrieve the information and extract the information, total 30*

*hours. (This excluded searching the files regarding the campaign i.e. to the extent the content is relevant to a subsequent request.)*

*This estimate was reduced, in order to make a conservative estimate, from 30 hours to 25 hours.*

*I can now confirm that there were 17 files in existence at the date of the first campaign request, some with more than one physical file "cover" or part.*

2. *5 email accounts @ 20 minutes each = 1 hour*

*5 Email accounts:*

1. *[name redacted], Comptroller and City Solicitor*

2. *[name redacted], PA to Comptroller and City Solicitor*

3. *[name redacted], Solicitor who provided original legal advice to Revenues on COSREC application for rate relief*

4. *[name redacted], Assistant City Solicitor who took over conduct of the matter and who also considered various, related FOI complaints*

5. *[name redacted], Principal Legal Assistant who provided legal advice and otherwise managed various requests for information relating to COSREC and rate relief*

3. *5 electronic systems @ 20 minutes each = 1 hour*

*Refer above for details.*

**TOTAL = 27 hours.**

[The estimates in 2 and 3 above were reduced down from 1 hour 40 minutes in each case to give a conservative estimate.]

**RO [Revenues Office] records:**

*Locating and searching:*

1. *4 hard copy files @ 1 hour per file = 4 hours*

2. *2 email accounts @ 30 minutes each = 1 hour*

3. *1 email account @ 2 hours = 2 hours*

4. 2 electronic systems (relating to contract and contractor's procedures) @ 1 hour each = 2 hours
5. 1 paper file (current audit report) @ 30 minutes

*Retrieving, extracting = 2 hours*

**TOTAL = 11 hours 30 minutes.**

***IA [Internal Audit] records (with respect to [complainant's] request of 9 August 2010 – FS50353495):***

*The information in relation to the internal audit investigation held centrally with Chief Internal Auditor in one place (1 - email folder & 1 hard document folder) my estimate of the time to be taken in searching, locating, retrieving and extracting the information:*

**TOTAL = 1 hour**

***TC records (with respect to S Williams's request of 15 August 2010 – FS50353428):***

1. 5 mins to add up monthly totals of FOI requests and complaints for 2 years up to 13/8/2010 (last working day before the request was received), to check a list showing whether any of the requests concerned are or were subject to a complaint and whether the complaint was upheld or not.
2. 16 mins to check e-files on each of the cases to see which department(s) participated in the reviews and which department(s) held the information reviewed.

**TOTAL = 21 mins"**

35. On receipt of this estimate the Commissioner noted that the first element of the estimate relating to CSS records seemed contradictory. The CoL first referred to 30 hard copy files and then later to only 17. The Commissioner therefore asked the CoL to explain this in more detail and to consider whether it needed to revise its estimate.
36. The CoL responded. It explained that its estimate of a total of 30 hard copy files was correct. Its reference to 17 files later on in its estimate was referring the 17 known 'main' files relating to COSREC. It confirmed that some of the 17 'main' files will have a number of sub folders which will have been created to accommodate the volume of information. It estimated the total hard copies files, both 'main' files and sub folders, to be 30.

37. The Commissioner accepts that the eight requests will cover a significant amount of recorded information held by the CoL and that such information will be held both electronically and manually, and in more than department within the CoL. According to this estimate a total of 23 hard copy files would have to be reviewed and various email accounts for the requested information. Although the CoL has only estimated that it would take an hour to review each hard copy file, the Commissioner considers it would reasonable to state that, for at least some of these files, in reality it would take much longer than an hour to determine whether these files contain relevant information and to extract this from non relevant information.
38. The Commissioner is satisfied that only those activities outlined in part 4(3) of the Regulations have been taken into account by the CoL when arriving at this estimate. He is also satisfied that the above cost breakdown provides sufficient evidence to demonstrate that the cost to comply with all eight requests would exceed the cost limit. The Commissioner considers this estimate to be both reasonable and supported by evidence provided by the Council and accepts that it is not unreasonable to state that it would take in excess of 39 hours to comply with these eight requests.

## **Conclusion**

39. Overall the Commissioner is satisfied that the complainant and the three other applicants are, or at least appear to be for the purposes of section 12(4)(b), acting in concert or in pursuance of a campaign, that the eight requests are for the same or similar information and were received by the CoL within 60 working days, and that the cost to comply with all eight request would exceed the cost limit prescribed by the Act. He has therefore concluded that section 12(1) applies by virtue of section 12(4)(b) of the Act in this case.

## **Section 16 – duty to provide advice and assistance**

40. Section 16(1) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
41. Whenever the cost limit has been applied, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code. If a public authority provides an indication of

what, if any, information could be provided within the costs limit it will have complied with the requirements of the Code of Practice and therefore section 16(1) of the Act.

42. In this case there are four applicants. Although one response was issued to all, the Commissioner notes that the CoL did explain clearly exactly which aspects of the eight requests and what information it could potentially provide within the cost limit, giving the applicants the opportunity to make fresh requests to the CoL for the information which does fall under the cost limit. The Commissioner is therefore satisfied that the CoL did provide appropriate advice and assistance to the four applicants and therefore complied with the requirements of section 16(2) of the Act.

## **The Decision**

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43. The Commissioner's decision is that the CoL dealt with the request for information in accordance with the Act:

- it appropriately applied section 12(1) by virtue of section 12(4)(b) of the Act; and
- adhered to the requirements of section 16(2) of the Act.

## **Steps Required**

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44. The Commissioner requires no steps to be taken.

## Right of Appeal

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45. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

46. 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.
47. 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 11<sup>th</sup> day of October 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Advisor  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## **Annex A**

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The seven other requests are as follows:

### Complainant

*Request dated 6 August 2010.*

"I request you release all recent (last 2 years) correspondence with the Information Commissioner's Office on issues concerning Scientology."

### Applicant one

*Request dated 8 August 2010.*

"Please give the reasons why the City of London decided that the Scientology building at 146 Queen Victoria Street should be entitled to a reduction in business rates.

Please include (but do not limit your answer to):

- 1) The factual assertions made by the applicant to the City of London.
- 2) The checks of veracity which City of London carried out upon these assertions.
- 3) The specific criteria met by the applicant. For example, did City of London conclude that the applicant was a charity? That it was carrying out charitable work? If so then what was this charitable work?
- 4) The specific legislation under which the discount was granted.
- 5) The way in which the applicant met the criteria specified by the legislation in 4).
- 6) The change which occurred between the City of London's first and second assessments of the applicants eligibility (which were both negative) and the third assessment of the applicant's eligibility (which was positive)."

*Request dated 17 August 2010.*

"Please provide, in electronic format, all information held in respect of the application for mandatory relief from national non-domestic rates for the property 146 Queen Victoria Street (London HQ of the Scientology cult).

Please also provide, in electronic format, the reasons why the City of London granted mandatory relief to the Scientology cult as a charity in spite of the Charity Commission's prior decision that the Scientology cult is not a charity.



Please provide, in electronic format, all information held in respect of subsequent complaints, correspondence and FOIA queries received from the public relating to the Scientology cult itself and to the property named above.

Please also provide, in electronic format, all internal communications (e.g. emails, memos, letters) relating to the above matters."

*Request dated 28 August 2010.*

"Please provide all records of the meeting which was held at 2pm on Monday 4<sup>th</sup> July 2005 at 42 Leinster Garden concerning relief from national non-domestic rates for the property at 146 Queen Victoria St, owned by Church of Scientology Religious Education College Incorporated, a foreign corporation which falsely claimed to City of London (in its application for mandatory relief from NNDR) to be an Australian charity.

Please include:

- list of attendees
- agenda
- documents circulated before the meeting or discussed at the meeting
- minutes
- transcript
- notes
- reports of the meeting
- staff recollections of the meeting's content
- and any other information held."

#### Applicant two

*Request dated 14 August 2010*

"In part response to FOI request by another individual (name redacted 7 April 2009) regarding rates relief at 146 Queen Victoria St, you stated:

"reliance was placed inter alia on an earlier decision of the European Court of Human Rights concerning a challenge by the Church of Scientology against Sweden, which the Church of Scientology drew to the attention of the CoL. Following consideration of this decision as to the Court treating the church and its members as having religious rights and taking all factors into account, in particular commentary contained in explanatory notes in the Employment Equality (Religion or Belief) Regulations 2003 published by the DTI, the matter was reconsidered, and it was decided that the statutory criteria set out in

the Local Government Act 1988 were met such that the Church qualified for mandatory relief."

- 1) There have been at least two cases before the ECHR which were *Scientology v Sweden*: Ref 8282/78 and 7805/77. Both cases were deemed inadmissible in court. In light of this, could you please advise:

(1a) the specific case, and

(1b) the text of the specific decision or decisions of the court within that case that were relied upon as indicated.

- 2) The explanatory notes to the Employment Equality (Religion or Belief) Regulations 2003 is some 51 pages in length, and appears to pertain solely to definitions and interpretations applying to employment law. In light of this, could you please identify:

(2a) the specific parts, sections, paragraphs and sub-paragraphs as appropriate, which were relied upon as 'factors' as described above.

Could you please explain:

2b) the justification upon which guidelines to employment law were applied to considerations for exemption to business rates relief.

- 3) In a later response to the earlier FOI request cited above, you stated:

"Information reviewed and/or considered I taking the decision to award relief [included a] Research Paper [entitled] 'The Congregational Services of the Church of Scientology' by Bryan Wilson"

Despite the description of the document as a 'research paper' it does not seem to have been published in any manner prior to the author's death in 2004, and then only by an agency of the Church of Scientology, and no peer review appears to have taken place. Nor does the document describe whether or how any research was undertaken. In light of this, can you please explain:

(3a) How you came to describe the document as a 'research paper'

(3b) Whether the perception of this document in the decision making process as a 'research paper' (rather than, for example, as an 'opinion essay') in any way influenced the outcome.

(3c) Whether any consideration was given as to the possibility that the author may have been compensated for his work.

This document states it was prepared upon request to address the case of "R V Register General ex parte Segerdal".

In light of this, can you advise:

(3d) If the case itself, specifically the unanimous verdict of the Court of Appeal, Civil Division by Lords Denning, Winn and Buckley, was reviewed in any manner, prior to the granting of rate relief.

(3e) What consideration, if any, was given to the court judgement in the decision to grant rat relief.

Also, you state in your earlier FOI response that "the paper is not [publicly] available in its entirety [online]"

(3f) please provide an electronic copy of the complete paper."

*Request dated 31 August 2010*

"Could you please provide full information as below, pertaining to the granting of mandatory rate relief under section 43(5) and (6) of the Local Government Finance Act 1988

1. Is there a scheduled review, annual or otherwise, for (1a) renewal or (1b) continuation of the relief granted to a specific hereditament. (1c) Please provide all CoL policy or procedures relating to such review.
2. What processes exist for members of the public to challenge the (2a) initial or (2b) renewed or continuing granting of such relief. (2c) Please provide all CoL policy and procedures relating to public challenge as above.
3. Where granting of relief is found in retrospect to be inconsistent with legislation:

What (3a) procedures, documented or otherwise, exist to deal with such a situation, and (3b) what would be required to trigger such procedures, and (3c) please advise CoL policy relating to subsequent recovery of grants made in such circumstances.

4. Please provide CoL policy and procedures..., where not already covered above, relating to the granting of relief under LGFA'88 43(5) and (6).
5. Where not clearly covered by responses to the questions above, (5a) whether and (5b) under what circumstances, the potential cost of potential legal action might factor in deciding to grant or deny rate relief."

Applicant three

*Request dated 15 August 2010*

"Please state:

- a) How many FOIA requests have been made to City of London in the past 2 years?
- b) Of those FOIA requests, how many have progressed to internal review?
- c) Of those internally reviewed, in how many cases has the internal review reversed the original decision? (i.e. in how many cases has the internal review decided that information which was to be withheld should instead be released?)
- d) My understanding is that City of London's internal reviews are conducted by the legal department. Is this correct?
- e) In how many cases were internal reviews conducted by the legal department on disputed information which had originally been created by the legal department? (i.e. cases where the FOIA request included information, such as legal advice, which had been generated initially by the legal department, and where the FOIA request has progressed to internal review, and where the internal review was conducted by the legal department?)
- f) For any cases which meet the criteria in (e) above, please provide all information held concerning those cases, including the name of person(s) who created and approved the disputed information, and the name(s) of the persons who conducted the internal review and approved its conclusions.
- g) If any of those cases progressed further to the Information Commissioner or to the Tribunal, please provide all information held, including the name(s) of persons who drafted or approved City of London's legal pleadings before those bodies and communications with them."

## Annex B

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Blogs found on discussion forum whyweprotect.net:

### **Anonymous entry, believed to have been made 31 August 2010:**

"That's true. I'd agree that if sufficient dox are released then that can do the job itself.

Re individual personalities within CoL, one thing to remember is that the CoL legal department which is doing internal reviews on FOI request – and which is running the ICO correspondence and the Tribunal case – that's the **same** legal department which provided the legal advice which probably decided this issue for CoL.

So for them, its personal. They have a **personal** interest in withholding the information.

Which is kind of interesting because it could (arguably) be said to compromise CoL's internal review process, so potentially this is an interesting issue for FOI purposes all by itself."

### **Anonymous entry – 6 September 2010:**

"Asking WT, DT, TS, JM and SW to up date their WhatDoTheyKnow FOI's plz

Thank you guys".

### **Anonymous entry – 6 September 2010:**

"This is the list of requests they want to bundle together, and then not do most of because after bundling it would take to long...

(1) 6 August 2010 [name redacted]

For docs of complaints against CoL re FOI reqs re Sci  
City of London Scientology – WhatDoTheyKnow

(2) 8 August 2010 [name redacted]

For application, checks, reasons, legislation refs, what changed between applications  
Scientology rates relief - WhatDoTheyKnow

(3) 9 August 2010 [name redacted]

For Internal Audit docs  
Scientology tax/Internal audit – WhatDoTheKnow

(4) 14 August 2010 [name redacted]

Procedures/policy re granting and revoking relief

Procedures for granting and revoking rates relief – WhatDoTheyKnow

(5) 15 August 2010 [name redacted]  
FOI review procedures and stats – Scientology not mentioned  
FOIA stats – WhatDoTheyKnow

(6) 17 August 2010 [name redacted]  
All info: application, reasons, FOI reqs  
146 Queen Victoria St (Scientology HQ) NNDR – WhatDoTheyKnow

(7) 28 August 2010 [name redacted]  
Records of the meeting which was held at 2pm on Monday 4<sup>th</sup> July 2005 at  
42 Leinster Gardens  
Business rates meeting re 146 Queen Victoria St (Scientology HQ) –  
WhatDoTheyKnow

(8) 31 August 2010 [name redacted]  
Clarification of references made to docs in response to WT  
Scientology Rates: Explanation of previously cited considerations –  
WhatDoTheyKnow

Note that according to the regs, the decision to see a bunch of requests as  
'acting in concert' or 'in pursuance of a campaign' Page 6 this PDF is solely  
down to the authority.

I do not believe my reqs (JM) overlap the others to any meaningful extent  
(not similar information), and that is the basis of my appeal – clearly there  
ARE significant overlaps in some (but only some) of the others. The lesson  
here is to try and avoid overlap, and not bombard them with too many broad  
scoped requests at once. Which is to say, if they are going to see us as  
'acting in concert' anyway, it's better for us if we do just that :-/

I don't know how many of the named individuals actually use WWP, but I  
think we need to enhance the wiki page (esp around CoL) with summary info  
around each FOI req; like summary info requested, date requested, name  
attached to request to avoid any doubling-up in future.

For the moment, my thoughts would be to appeal if your req is well-scoped  
and had little or no over-lap, and consider (just consider) withdrawing your  
request if it's perhaps too broadly scoped and thus putting others at risk."

**Entry made by [named redacted] – 6 September 2010**

"I think it is better to ask just one question or a single piece of information.  
Get each person to ask for just one different thing. It is to avoid the  
evasiveness and reduce the opportunity for obfuscation. For this mandatory

rate relief all I am interested in lately is the original application form filled in by the clams and a clear statement from the local authority for their justification that the main use of the premises (auditing and training members in return for money) is for the public benefit".

## Legal Annex

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### 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 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 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”.

### **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”.