

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 June 2009

Public Authority: Plymouth City Council
Address: Civic Centre
Armada Way
Plymouth
PL1 2EW

Summary

The complainant submitted a series of requests to Plymouth City Council ("the council") stemming from the council's assessment of his benefit application and as a consequence of the responses received made several complaints to the Information Commissioner ("the Commissioner"). After an initial assessment the Commissioner considered it appropriate to investigate five of the requests. Following the investigation the Commissioner found that the council had provided sufficient evidence to correctly apply section 14(1) of the Act to refuse one request and that, in relation to the other four requests, the council committed breaches of the following procedural sections of the Act; section 1(1)(a), sections 10(1), section 17(1), section 17(1)(b), section 17(1)(c) and section 17(7). The council is required to respond fully to one request in compliance with it's obligations under section 1(1) of the Act within 35 calendar days.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background to the complaint

2. The complainant made in excess of 20 requests to the council between December 2005 and January 2007. All of these requests stemmed from the council's assessment of his benefit application in May 2005 when working tax credit was included in the complainant's income assessment as he was in receipt

of this tax credit. Some of these requests were wide ranging and contained numerous individual Freedom of Information requests.

The Request

Request i)

3. On 1 December 2005, the complainant wrote to the Senior Revenues Officer at the council requesting the following information:

“...a copy of all of the guidelines to which you are referring in your letter and all of the guidelines and regulations which you have used to base your bizarre determination in this matter, as well as my data protection print and file (which must cover and include all dates and entries made over the relevant period, in its entirety) to be forwarded to me as soon as is possible (and with added expediency due to the 1 month deadline prescribed for making such appeals).

I will also need complete and separate clerical rundowns of the level of housing and council tax benefit awarded over the entire duration of my current claim, the level and relevant dates, of the contributions out of ISA that you have determined that I should make (when you have withheld council tax and housing benefit payments) and my entire liability over the entire period in question, as calculated by yourselves, and is the difference between the amount paid in council tax/housing benefit and the actual amounts payable or due over the said period.”

Request ii)

4. On 6 April 2006, the complainant requested the following information from the Accounts Processing Manager at the council:

“I was previously advised by one of your staff members that your office was not, in fact, allowed to make contact with HM Revenue and Customs in relation to some (or all) Matters relating to ‘Tax Credits’.

Please inform me on what grounds, basis, legislation, regulation or guidelines are you actually debarred from contacting them in respect to any matter.”

Request iii)

5. On 16 April 2006, the complainant wrote to the Head of Revenues and Benefits at the council requesting the following information:

“...an original copy (where possible) of every single internally and externally or publically [sic] supplied/provided documents, documentation, notices, printed information, handwritten information, internal correspondence/ instructions, memorandums, disclosures, circulars, leaflets, guides, pamphlets, publications, articles of policy, guidance notes and any other literature or warnings, etc, etc which your office/department have had or supplied/notified/provided/informed or

warned about up to the date of this letter and since 2002 (and for you to state on a line by line item basis what/which items were internal/external/public or, in fact, whether all of this criteria could applied to any particular item/s).”

Request iv)

6. In a letter dated 16 April 2006, the complainant requested the following information from the Head of Revenues and Benefits at the council:

“In your letter, dated 8th May 2006, you believe that you quote: “...give very clear information to your customers on what is treated as income when assessing a claim for housing benefit (or council tax benefit)!””, end quote.

Please could you kindly tell me where, exactly, this so-called ‘very clear information’ is provided as I have been unable to find any reference in any of your literature, guides, etc of you not being able to disregard any tax credits as income (for housing benefit/council tax benefit purposes) even if it is established (or later established) that they were incorrectly received/wrongly paid/erroneously [sic] paid when the recipient was no longer working, etc and had to be repaid/reclaimed by hm revenues and customs (and believe me, I have looked!).

Request v)

7. In a letter dated 24 January 2007 to the Head of Revenues and Benefits at the council, the complainant made 71 interrelated requests regarding appeals, budgets, staff and customers.
8. The Commissioner does not find it necessary to detail all 71 requests here. The full text of this request can be found at Annex 1.

Council’s responses

9. As the complainant made a series of requests and complaints to the council since December 2005 there is a great deal of correspondence between the parties. Not all of these pieces of correspondences are relevant to the complaints made to the Commissioner and so are not recorded here.
10. In response to request i), the council wrote to the complainant on 7 December 2007 enclosing two manual calculation statements for the period since 30 May 2005 and noting the amount of the complainant’s liability for rent and council tax. The letter detailed the legislation used to determine the benefit and directed the complainant to a website where it could be found. The letter also informed the complainant that the request for a copy of his file had been referred to the relevant section who would write to him shortly.
11. In response to request iii), in a letter dated 23 May 2006 the council sought clarification of the request as follows:

“A Subject Access Request would provide you with a copy (subject to any applicable Statutory exemptions) of your entire Housing and Council Tax Benefits

Record and Council Tax Account, including all related documents received or issued by the Division both internal and external and details of assessments, awards, payments made and calculations.

Should a Subject Access Request as described above suit your needs please complete the form already issued to you and return it with the £10 administration fee.

If however, you are actually seeking a copy of all the information created, received and issued by the Division within the last four years, irrespective of any connection with your own claim or accounts then please confirm this.

Should neither of these options be the case please could you advise the specific nature of the information that you are seeking.”

12. In response to request v), the council wrote to the complainant on 2 February 2007 stating that the request was vexatious and that it would not be providing an internal review of the decision. It gave the following reasons to the complainant stating that the questions within the request were;

an attempt to impose a significant burden on the council, designed to cause disruption and annoyance, had the effect of harassing the council, and could be characterised as obsessive and manifestly unreasonable.

The Investigation

Validity of the complaint

13. The Commissioner usually expects a complainant to have gone through a council's internal review procedure before referring a complaint to his office under section 50 of the Act. In view of the volume of requests and correspondence between the parties and difficulty experienced in establishing whether internal reviews to the specific requests had taken place the Commissioner deemed it appropriate in this instance to consider the complaint without firm evidence of internal reviews.

Scope of the case

14. On 27 January 2007, the complainant contacted the Commissioner to complain about the way his numerous requests for information had been handled. The complainant wished the Commissioner to investigate the alleged repeated and consistent failure to action the requests within the statutory time period.
15. In a letter dated 25 March 2007, the complainant further contacted the Commissioner with fresh complaints regarding more requests for information that he had made to the council and provided 56 reasons why the information requested was required.

16. On 8 May 2007 the complainant again contacted the Commissioner to complain that further requests had been refused and that the council were applying a blanket dismissal and/or ignoring the requests on the basis that they are vexatious. The complainant also provided an additional 6 reasons why the information requested was required.
17. The Commissioner is considering the Council's handling of requests i) to v) above only. However, the Commissioner is not considering the subject access request made as part of request i) as the council have stated that the complainant did return the subject access request form and fee.
18. The Commissioner wrote to the complainant on 30 May 2008 to inform him that only these requests would be investigated unless the complainant provide clarification of his other complaints. No such clarification was received.

Chronology

19. On 28 May 2008, the Commissioner telephoned and wrote to the council requesting that it, if it had not already done so, respond to requests i) to iv) providing the Commissioner with copies and to also provide further explanation as to why it considers request v) to be vexatious.
20. As stated in paragraph 18 above, the Commissioner wrote to the complainant on 30 May 2008 to outline his understanding of the complaint and to inform him of the scope of the investigation.
21. On 24 June 2008, the council responded to the Commissioner apologising for not being able to complete the actions requested in the letter of 28 May 2008 and stating that it would do so by 25 July 2008. It also enclosed a correspondence log and copies of correspondence to the complainant but these related to requests outside of the scope of the investigation.
22. The Commissioner wrote to the council on 30 July 2008 warning that if a response to the letter of 28 May 2008 was not received by 8 August 2008 an Information Notice would be issued to legally compel the council to respond.
23. On the 30 July 2008 the Commissioner received a letter from the council making the following points:
 - It had written to the complainant requesting authorisation to release data about him to the Commissioner following previous correspondence from the complainant requesting that the council obtain written authorisation before any disclosure.
 - It was seeking to apply section 14 to all outstanding requests for information including all those within the scope of the Commissioner's investigation.
 - It intended to enlarge upon its reasoning for applying section 14 through the internal review to request v) requested by the Commissioner.
 - It noted that the complainant had made approximately 140 requests about the same subject.

24. The Commissioner telephoned the council on 5 August 2008 to chase up the full response to the letter of 28 May 2008.
25. On 11 August 2008, the council wrote to the Commissioner enclosing a letter of the same date sent to the complainant. Each of the five requests were addressed as follows:

Request i)

The council noted that the request was replied to on 7 December 2007 (as per paragraph 10 above). It also made the complainant aware that the relevant legislation and guidance could be viewed on the internet via public access computers at the Central Library or obtained through bookshops or the public library. The council stated that the information requested was made available or was accessible by other means. It also noted that the Local Government Ombudsman recognised that the council had made a reasonable response to the request.

Request ii)

The council noted that the request had originally been overlooked as it had responded to 9 separate letters from the complainant in the preceding 5 weeks and that the relevance of this particular enquiry was insufficient for it to be mentioned in the complainant's many subsequent letters to the council. However, the council did provide a response to the complainant by stating that where it has a legitimate query relating to tax credits supplied in support of a housing benefit application, it is allowed to discuss these details with the appropriate officers from HM Revenue and Customs. The council stated that they do not hold any recorded information that states that the council is debarred from contacting HM Revenue and Customs in relation to 'Tax Credits'.

Request iii)

The council noted that clarification of the request had been requested on 23 May 2006 (as per paragraph 11), as a very similar request had been made the following day but with a different time span, but that no response had been received so the request for information had not been progressed. It also noted a request for this volume of information was likely to have been refused as it exceeded the limit contained in the Fees Regulations.

Request iv)

The council noted that it summarised the application for information as;

“where is the clear information about my particular Benefit claim situation”.

It stated that the request was written after the quoted letter of 8 May 2006 was received, not on 16 April 2006 as dated but no evidence was submitted as to when the request was received. It also stated that the complainant was not asking for a specific document but for a document that specified the particular circumstances of the complainant's benefit claim. The council noted that a relevant document was provided to the complainant through the Appeals Service

Tribunal statement of reasons explaining their decision made on 10 April 2006.
The council stated that they do not hold;

“any other recorded information that assists with the unclear application for information”.

Request v)

The council noted that this request was similar to, and a progression of, a letter dated 4 January 2007 containing 26 requests and was received directly after the complainant had been informed in a letter dated 22 January 2007 that his requests for information up to and including the 5 January 2007 were considered vexatious and would not be answered. The council stated its reasons for why the request is vexatious which are detailed in the analysis section below.

26. On 15 August 2008 the council provided the Commissioner with a copy of a correspondence log between the council and the complainant detailing 287 instances of correspondence between the parties from June 2005 to June 2007.
27. The complainant wrote to the council on 25 August 2008. He commented on each request as follows:

Request i)

The complainant made it clear that he was not happy being referred to the internet to obtain the information requested.

Request ii)

The complainant noted that the council had answered his question but expressed his dissatisfaction that this was done over 2 years later and that the information contradicted what was previously verbally told to him.

Request iii)

The complainant stated that the requested clarification was provided ‘time and time again’.

Request iv)

The complainant asserted his opinion that the council had ignored this request stating that:

“Your council said that it provided ‘clear information’ but as I could not find this so-called ‘clear information’ anywhere at all I asked for clarification to be provided and for all of the councils literature to be supplied to me!...As you have not actioned my request for information, I am at a loss to know how you can possibly be sure that you do not hold any of the requested information!??”

Request v)

The complainant expressed his dissatisfaction with the application of section 14. This included pointing out that some of the requests were cross-referenced in order to reduce the character count required, that if the questions were not clear enough then the council should have said so, that he found it hard to believe that his use of mathematical notations would cause the revenues department any

- problems and that the level of correspondence which he has had to enter into tells its own tale.
28. By letter of 11 September 2008, the Commissioner informed the council that he assumed it no longer wished to treat requests i) to iv) as vexatious as it had responded to the complainant in relation to these requests in its letter dated 11 August 2008. The Commissioner also requested that further information to support the council's application of section 14 be provided by 9 October 2008.
 29. The council replied on 8 October 2008 expanding on its reasons for applying section 14 which are detailed in the analysis section below. The council also stated that in its opinion the complainant's letter of 25 August 2008 illustrates that although he disagrees with the council's response he is not expecting any further action from the council over requests i) to iv).
 30. On 16th October 2008 the Commissioner again wrote to the council requesting additional information relating to its vexatious claim. He was specifically seeking information as to whether the complainant's issue regarding his entitlement to benefits has been resolved.
 31. The council responded on 7th November providing the requested information as detailed in the analysis section below.
 32. The Commissioner telephoned the council on 9 April 2009 to request clarification of some of the issues. This was provided by the council on 20 April 2009 and 1 May 2009.

Analysis

Procedural matters

Request i)

33. Recorded information of the description specified in the request exists in the form of benefit entitlement calculations, legislation and guidance. Some of this information was provided by the council on 7 December 2007 and the complainant was referred to where the remainder of the information could be found on 7 December 2007 and 11 August 2008.

The information was therefore provided or made accessible by other means although this was done 24 and 32 months after the date of the request and the council did not state that they were relying on an exemption within the Act.

On this occasion, the council also failed to make the complainant aware of its internal review procedure and the complainant's right to complain to the Commissioner should he have been dissatisfied with the outcome of any internal review process.

Request ii)

34. The Commissioner is satisfied that recorded information is not held in relation to the request. If the council were debarred from contacting HM Revenue and Customs in relation to tax credits then it would be reasonable for the complainant to expect that information was held in a recorded form. However, the council has confirmed that it is permitted to contact HM Revenue and Customs in relation to tax credits and that it does not hold any recorded information of the description specified in the request. The complainant has offered no evidence to the contrary therefore on the balance of probabilities it is reasonable to accept that no recorded information exists.
35. Any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the questions. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The council provided an answer to the question in the spirit of providing advice and assistance. However, this was only communicated to the complainant following intervention by the Commissioner and over two years after the date of the request.

Request iii)

36. The council is of the opinion that the request is unclear, a position which the Commissioner upholds taking into account the context of the letter within which the request is contained.
37. The Commissioner agrees with the council that the request could mean all of the information created, received and issued by the Revenues Division within the last four years, irrespective of any connection with the complainants own claim or a copy of the complainants entire Housing and Council Tax Benefits Record and Council Tax Account, including all related documents received or issued by the Division both internal and external and details of assessments, awards, payments made and calculations.
38. The Commissioner therefore finds that the council has reasonably requested clarification of the request from the complainant in accordance with their right under section 1(3) of the Act. However, this was not done within the statutory timescales.
39. As stated in paragraph 27, the complainant is of the opinion that he has provided clarification of the request. The Commissioner notes that the complainant did ask the council by letters of 7 & 9 November 2006 to provide the information requested in his letter of 16 April 2006 but the complainant did not specify in these later letters whether he was referring to request iii) or request iv). However, regardless of this, it is clear that the content of the letters dated 7 & 9 November 2006 do not constitute clarification of the request.
40. The Commissioner also notes that the complainant repeated the exact wording of the request by letter dated 31 December 2006 but again the Commissioner does

not view the repetition of a request as a valid response to a request for clarification.

Request iv)

41. The council have dealt with this as a request for information covering a specific situation, namely, the circumstances encountered by the complainant whereby tax credits 'incorrectly received/wrongly paid/erroneously [sic] paid' are not disregarded as income when assessing a claim for housing or council tax benefit. The council concluded that no other recorded information was held despite stating that the request for information was unclear.
42. As per paragraph 25, the council stated that a relevant document was provided by the Appeals Service Tribunal and that no other recorded information is held.
43. However, the Commissioner is of the opinion that the council's interpretation of the request is not an objective reading. Whilst the Commissioner appreciates that the council has looked at the request in the context of other correspondence with the complainant, an objective reading would interpret it as broader than just for information relating to the complainants particular benefit claim situation, and therefore the issue relating to tax credits, but for more general literature and guidance as to what is treated as income when assessing a claim for housing or council tax benefit. In arriving at the opinion above, the Commissioner has examined the request as it is written and taken into account the fact that the complainant is referring to the 'very clear information' given to 'customers' not just information given specifically to himself.
44. In reaching the decision that the council's interpretation of the request is not an objective reading the Commissioner has considered the case of *Berend v the ICO & London Borough of Richmond upon Thames (LBRT (EA/2006/0049 &50))* in which the Tribunal found that;

"the request should be read objectively. The request is applicant and motive blind and as such public authorities are not expected to go behind the phrasing of the request".
45. The Commissioner considers that in this case the phrasing of the request is such that an objective reading can only be for information given to customers as to what is treated as income when assessing a claim for housing or council tax benefit. He considers that the council have gone behind the phrasing and considered their past knowledge of the complainant's dealings with the council. The Commissioner recognises the decision in *Boddy v the ICO and North Norfolk District Council (EA/2007/0074)* which found that;

"if an applicant had been in discussions or correspondence with the public authority about a particular matter ...then we would expect the public authority to take into account the contemporaneous dealings with the applicant to clarify the information that was being requested."

The Commissioner considers that where a request is clear but a public authority suspects, from its prior knowledge of the applicant that they may require different or additional information to that specified in the request then they are permitted to seek clarification however, in this case the council did not request clarification and the Commissioner therefore considers that the objective reading should have been that based on the phrasing of the request which in his opinion is clear and unambiguous.

46. The disclosure of the Appeals Service Tribunal statement of reasons does not therefore constitute information of the description specified in the request as it is specific guidance for the complainant rather than the general guidance available to all customers as requested by the complainant.
47. The council have not therefore responded appropriately to the request as it did not read the request objectively nor did it respond within the statutory timeframe.

Section 14 'Vexatious or repeated requests'

Request v)

48. The Commissioner has considered whether the council correctly applied the exclusion at section 14(1) of the Act to the complainant's requests for information.

49. Section 14(1) states:

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

50. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states:

"Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?"

Context and history

51. The council have considered the request in the context and history of the issue and specifically in relation to its letter sent to the complainant on 22 January 2007. This letter was in response to the complainant's letter of 4 January 2007 which contained 26 requests. The letter of 22 January informed him that his

requests for information up to and including the 5 January 2007 were considered vexatious and would not be answered.

52. A request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. This was the view of the Tribunal in *Betts v Information Commissioner EA/2007/0108* (19 May 2008). In that case the Tribunal considered not just the request but the background and history to the request as part of the long drawn out dispute between the parties. That request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.
53. The Commissioner notes in his Awareness Guidance on the subject of vexatious and repeated requests that it is the request, not the requester, that must be vexatious and therefore consideration has been given to the five questions stated in paragraph 32.

Could the request fairly be seen as obsessive?

54. In his Awareness Guidance on the subject of vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The guidance states that;

“Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered”.
55. The council have provided evidence of at least 287 contact occasions with the complainant on the issue of his dispute regarding his benefit application since June 2005 to June 2007, with 240 of these taking place before his request of 24 January 2007. The complainant submitted 138 letters between choosing to appeal the benefit assessment and the request being made and the letter of 24 January 2007 was the 17th received in a period of one month.
56. The council considers that the 71 questions in the request of 24 January 2007 are similar to the 26 posed in the request of 4 January 2007 in that they have the same focus and are a set of questions that in many cases are interdependent, a position with which the Commissioner agrees. Furthermore, the council has submitted that since June 2005, the complainant has stated that his information requests have been in connection with his dispute over his entitlement to benefits and not in connection with any other interests.
57. Although the Commissioner acknowledges that only events leading up to the request in question can be taken into consideration, he recognises the evidence proffered by the council that the complainant has continued with his requests and dialogue with the council since the one in question including making 44 interrelated requests on 14 February 2007. The Commissioner views this as adding weight to the evidence of the obsessive behaviour in this case.

58. The council provided evidence that the issue had been dealt with by a hearing at the Appeals Service on 10 April 2006 where the appeal was not upheld and that the complainant's application on 13 April 2006 to have the decision set aside was refused. Evidence was also submitted that the Local Government Ombudsman on 23 June 2006 found no evidence to justify intervention in respect of a 76 point complaint resulting from the issue made by the complainant. The fact that the complainant persists with the issue despite being in possession of independent evidence that the council's stated position is valid is characteristic of an obsession as per the Information Tribunal in the cases of *Welsh v Information Commissioner EA/2007/008* (16 April 2008) and *Coggins v Information Commissioner EA/2007/0130* (13 May 2008).
59. As stated in paragraph 57 above, although the Commissioner acknowledges that only events leading up to the request in question can be taken into consideration, he also recognises the evidence submitted by the council that the Social Security Commissioner refused the complainant's appeal on 21 March 2007 as adding weight to the evidence of the obsessive behaviour in this case.
60. The Commissioner believes that the available evidence demonstrates that the request can be fairly characterised as obsessive.

Is the request harassing the authority or causing distress to staff?

61. The Commissioner notes in his Awareness Guidance on the subject of vexatious and repeated requests that;

"The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing.

Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints".
62. As demonstrated in paragraph 55, the council have provided evidence of both the high volume and frequency of requests which it has argued contributes to the request being vexatious. The Commissioner agrees with this opinion.
63. The Commissioner is aware of the complainant's use of language in his requests and letters to the council and believes that, on occasion, it can be objectively viewed as hostile towards individuals within the council and the organisation. Examples of such offensive language include; 'gross laziness', 'mickey mouse outfit', 'a figment of your own (apparently delusional) imagination', and 'Mr not so clever clogs'.
64. The council has argued that the request harasses the authority as the questions are;

“designed to be difficult to interpret as they deliberately cross refer to another question, use mathematical notation rather than plain English and do not define the terms within the question...”.

The council has further submitted that the questions are “persistent words that badger, annoy and affect the dignity of the council”. The Commissioner upholds the council’s position in this regard and points to part 65) of his request as an example of this as follows;

“what was the modal weekly number of customers which your department saw in the year X divided by Y take away Z if X equals 10K, Y equals 4 and Z equals 495?”.

65. The Commissioner has also taken into consideration the council’s argument that the request had the effect of harassing the council as the complainant was not open to discussion as to what information he was attempting to receive from the council and this contributed to the negative impact of the questions on the council.
66. During the course of the investigation, the Commissioner has also noted that the complainant’s requests for information are often mixed in with other complaints and accusations.
67. The Commissioner believes that the available evidence demonstrates that the request can be objectively seen as harassing the authority or causing distress to staff.

Would complying with the request impose a significant burden in terms of expense and distraction?

68. The Commissioner’s Awareness Guidance on the subject of vexatious and repeated requests states that;

“You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work.”

69. In order to demonstrate this, the council have claimed that asking for precise details about its daily operation in a ‘convoluted and repetitive manner’;

“... will impose a significant burden both in terms of expense and distraction. Many of the questions are unclear and will require clarification, i.e. question 1 does not specify which appeals are meant and whether the timescales include appeals that were opened or closed during the year”.

70. The council have further stated that;

“Many of the answers are not required for council business reasons and there is no indication that the public in general will benefit from this data being calculated i.e. question 66.”

71. It has further argued that the intent of the request appears to be to lead the council into diverting resources and that the request wastes public resources.
72. The council have estimated that answering the questions within the request that it can understand will take 39 hours.
73. Taking into account the council's submissions the Commissioner is satisfied that the request under consideration imposed a significant burden in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

74. The council have argued that the requests are designed to cause disruption;

“...due to the construction of the questions and the requests for data that are not usually or routinely published and not required by the agencies that ... (the complainant) states that he is intending to influence.”
75. It has further stated that it is reasonable to take the view that the set of 71 questions was disrupting the council due to the appeal process not finding in support of the complainant.
76. However, as this factor relates to the requester's intention and the complainant has not explicitly stated that he wants to cause disruption or annoyance in relation to this request, the Commissioner cannot conclude that this element of vexatiousness is present.

Does the request lack any serious purpose or value?

77. The council have proposed that the request lacks serious purpose or value. The complainant communicated to the council that the purpose of his requests is to obtain evidence and figures to convince government to make legislative changes. The complainant's dispute with the council was over the calculations applied in the assessment of his benefit application but the council was found to have applied the legislation correctly. The council have argued that the information requested is very unlikely to satisfy the purpose;

“For example in the 24 January letter questions about the budget or the number of customers...do not have any direct connection with the purpose of convincing government to make legislative changes in respect of the benefit entitlement that applies to ... (the complainant). In a general sense these questions may have some remote usefulness in arguing for legislative change but legislative change is in response to policy considerations, that can include minimising unfairness, but none of the questions help with identifying unfairness to any class of claimant. The questions do not therefore serve any serious purpose or value as identified by the applicant.”
78. However, as the Act is not generally concerned with the motives of the applicant but with transparency for its own sake, the Commissioner's Awareness Guidance

on the subject of vexatious and repeated requests states that even a request that seems spurious or tedious to the recipient may have genuine value to the individual.

79. The Commissioner is of the opinion that any serious value or purpose in this request is not enough to prevent it being vexatious. This position follows the Tribunal's ruling in *Betts v Information Commissioner EA/2007/0109* (19 May 2008) where;

"...the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the Council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on however and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests..." (para 38).

80. The Commissioner considers that the request can be fairly characterised as obsessive, harasses the authority and causes distress to staff and imposes a significant burden in terms of expense and distraction. The Commissioner does not find that the request is designed to cause disruption or annoyance or lack any serious purpose or value. However, the Commissioner is satisfied that on balance, taking into account the context and history, the request is vexatious.

The Decision

Request i)

81. The Commissioner's decision is that the council did not deal with this part of the request for information in accordance with:
- section 10(1) of the Act as the information was provided outside of the statutory time limit for providing a response.
 - section 17(1) of the Act as the council failed to provide the complainant with a notice stating that it was relying on an exemption of the Act within the statutory time period.
 - section 17(1)(b) of the Act as the council failed to provide the complainant with a notice specifying it was relying on the exemption at section 21 of the Act as some of the information was accessible by other means.
 - section 17(1)(c) of the Act as the council failed to provide the complainant with a notice specifying why the exemption relied upon applies.
 - section 17(7) for failing to make the complainant aware of its internal review procedure and the complainant's right to complain to the Commissioner

should he have been dissatisfied with the outcome of any internal review process.

Request ii)

82. The Commissioner's decision is that the council did not deal with this part of the request for information in accordance section 1(1)(a) and section 10(1) of the Act in that it did not inform the complainant that no recorded information was held within the statutory time limit.

Request iii)

83. The Commissioner's decision is that the council did not deal with this part of the request in accordance with section 10(1) of the Act in that it failed to respond appropriately, by seeking clarification, within 20 working days.

Request iv)

84. The Commissioner's decision is that the council did not deal with this part of the request in accordance with section 10(1) of the Act as it failed to consider its duties under section 1(1)(a) and 1(1)(b) of the Act within 20 working days.

Request v)

85. The Commissioner's decision is that the council complied with the Act in that the exclusion at section 14(1) was applied correctly.
86. However, the Commissioner also finds that the council failed to comply with section 17(7)(a) for failing to offer the complainant an internal review.

Steps Required

87. The Commissioner requires the council to comply with sections 1(1)(a) and 1(1)(b) of the Act in relation to the objective reading of request iv), that being for information given to customers as to what is treated as income when assessing a claim for housing or council tax benefit within 35 calendar days.
88. To comply with section 1(1)(a)
- It must confirm or deny in writing whether it holds relevant recorded information or indicate that is relying on an exclusion to the duty to confirm or deny in this case (these exclusions allow the council to state that it is unable to confirm or deny whether information was held because to do so would disclose exempt information). If it is relying on a prejudice and public interest based exemption it must indicate why confirming or denying would engage the exemption (that there would, or would likely to be prejudice to a purpose outlined in the Act) and its conclusion about where the balance of public interest lies.

89. To comply with section 1(1)(b)
- If it confirms that it holds relevant recorded information, it should either provide the information or issue a notice, which complies with section 17 of the Act, indicating that it is relying on an exemption. If it is relying on a prejudice and public interest based exemption it must indicate why the exemption is engaged (that there would, or would likely to be prejudice to a purpose outlined in the Act) and its conclusion about where the balance of public interest lies.

Other matters

Request iii)

90. The responsibility for progressing the matter lies with the complainant to provide clarification of his request. The clarification would constitute a new request for information and any issue with the handling of this is outside the scope of this Decision Notice.

Failure to comply

91. 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

92. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: 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 served.

Dated the 1st day of June 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that -

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

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

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

Section 1(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

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.”

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”

Refusal of Request

Section 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt

information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Annex 1

- 1) how many appeals have there been in 2006?
- 2) what percentage of these appeals have the council won?
- 3) how many appeals have there been in the year previous to that specified in 1) above?
- 4) what percentage of the appeals in 3) has the council won?
- 5) how many appeals have there been in the year previous to that specified in 3) above?
- 6) what percentage of the appeals in 5) has the council won?
- 7) what is your department budget for 2007?
- 8) what was your department budget for 2006?
- 9) what was your departments budget in the year previous to that of 8) above?
- 10) were you able to meet the budget specified in 8) above or did you exceed it?
- 11) were you able to meet the budget specified in 9) above or did you exceed it?
- 12) did you use any agency staff in 2006?
- 13) Did you use any agency staff in the year previous to that stated in 12) above?
- 14) if agency staff were used in the period stipulated in question 12), what was the expenditure on such staff in 2006?
- 15) if agency staff were used in the period stipulated in question 13), what was the expenditure on such staff in 2005?
- 16) what was your budget for postage in 2006?
- 17) what was your budget for postage in the year immediately before that requested in 16) above?
- 18) did you exceed the budget referred in 16) and, if so, by how much?
- 19) did you exceed the budget referred in 17) and, if so, by how much?
- 20) what was your budget for stationary in 2006?
- 21) what was your budget for stationary in the year immediately prior to that specified in 20) above?

- 22) did you exceed the budget referred in 20) and, if so, by how much?
- 23) did you exceed the budget referred in 21) and, if so, by how much?
- 24) what was your budget for publications in 2006?
- 25) what was your budget for publications in the year one year before that requested in 24) above?
- 26) did you exceed the budget referred in 24) and, if so, by how much?
- 27) did you exceed the budget referred in 25) and, if so, by how much?
- 28) what is the daily number of people your department expects to see?
- 29) what is the expected [sic] per capita budget for each customer visit?
- 30) what was the daily mean average number of customer visits to your department in 2006?
- 31) what was the daily mean average number of customer visits to your department in the preceding year to that stipulated in 30) above?
- 32) what was the maximum number of customers who visited your department in a single day in 2006?
- 33) what was the most number of customers who visited your department in a single day in 2005?
- 34) what was the actual date that you saw the most number of customers in 2006?
- 35) what was the actual date that you saw the most number of customers in the year prior to that stated in 34) above?
- 36) what was the actual working date that you saw the least number of customers in 2006?
- 37) ditto as question 36), but this time for the year before 2006?
- 38) what was the most number of monthly customers who visited your department in 2006?
- 39) what month did you have the most monthly customers in the year immediately following 2004?
- 40) what was the modal number of customers your department saw in a day in 2006?

- 41) what was the modal number of customers your department saw in a day in the year two years later than 2003?
- 42) what was the median number of customers your department saw in a day in 2006?
- 43) what was the median number of customers your department saw in a day in the year three years later than 2002?
- 44) what was the lowest number of customers who visited your department in a month in 2006?
- 45) what was the lowest number of customers who visited your department in a month in the year 5 years previous to 2010?
- 46) what month had the lowest number of customers who visited your department in 2006?
- 47) what month had the lowest number of customers who visited your department in the year X minus three if X equals 2008?
- 48) what is the mathematical daily range for customers seen by your department in 2006?
- 49) what is the mathematical monthly range for customers seen by your department in 2006?
- 50) what is the mathematical weekly range for customers seen by your department in 2006?
- 51) what is the mathematical daily range for customers seen by your department in the year anno domini MM plus 8 minus 3?
- 52) what is the mathematical weekly range for customers seen by your department in the year anno domini MM plus 8 minus 3?
- 53) what is the mathematical monthly range for customers seen by your department in the year anno domini MMM minus 995?
- 54) what was the mean average wait for you customers to be seen in 2006?
- 55) what was the longest wait for a customer to be seen in the year MMV?
- 56) what was the mean average wait for you customers to be seen in the year MMV?
- 57) what was the longest wait for a customer to be seen in MMCV minus C?
- 58) what week in 2006 did you have the most weekly customers?

- 59) what week in 2006 did you have the least weekly customers?
- 60) what week in the Gregorian calendar year of 2005 did you have the most weekly customers?
- 61) what week in the modern calendar year of 2005 did you have the least weekly customers?
- 62) what was the mean weekly number of customers which your department saw in 2006?
- 63) what was the mean weekly number of customers which your department saw in the year 12.61 cubed?
- 64) what was the modal weekly number of customers which your department saw in 2006?
- 65) what was the modal weekly number of customers which your department saw in the year X divided by Y take away Z if X equals 10K, Y equals 4 and Z equals 495?
- 66) what was the median weekly number of customers which your department saw in 2006?
- 67) what was the median weekly number of customers which your department saw in the year that is quadrant of half of 16K40?
- 68) what is the correlation coefficient between the the [sic] number of customers seen in 2006 and the average customer waiting time in the same year?
- 69) what is the correlation coefficient between the the [sic] number of customers seen and the average customer waiting time in the year in the year previous to that specified in 68) above?
- 70) what was the total number of customers who visited your department in n [sic] the year specified in 1) above?
- 71) what was the total number of customers who visited your department in n [sic] the year specified in 3) above?