



**IN THE FIRST-TIER TRIBUNAL**  
**GENERAL REGULATORY CHAMBER**  
**INFORMATION RIGHTS**

**Case No. EA/2013/0052**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50472256**

**Dated: 6 March 2013**

**Appellant:** Howard Woodin

**Respondent:** Information Commissioner

**Public Authority:** Chief Constable of Hampshire Constabulary

**Heard at:** Field House, London

**Date of hearing:** 13 August 2013

**Date of decision:** 19 August 2013

**Before**

Angus Hamilton

Judge

and

Richard Fox

and

Narendra Makanji

**Subject matter:** S.12 FOIA and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations').

**Cases considered:** None

### **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 6 March 2013 and dismisses the appeal.

## **REASONS FOR DECISION**

### Introduction

- 1 Under section 1(1) of FOIA (the Act) a person who has made a request to a public authority for information is, subject to other provisions of FOIA:
  - (1) entitled to be informed in writing by the public authority whether it holds information of the description specified in the request (section 1(1)(a)); and
  - (2) if the public authority does hold the information, to have that information communicated to him (section 1(1)(b)).
  
- 2 Section 12 of FOIA provides, so far as material, as follows:
  - (1) 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.
  - (2) 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.
  - (3) 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.
  
- 3 The Secretary of State has made regulations which prescribe the appropriate limit for the purposes of section 12 of FOIA, namely the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations').

- 4 Regulation 3 of the Regulations prescribes that the appropriate limit for public authorities listed in Schedule 1 of the Regulations is £600 and for all other public authorities is £450. In this Appeal the appropriate limit is £450.
  
- 5 Regulation 4(3) of the Regulations provides that in estimating the cost of complying with a request to which section 1(1) of FOIA would otherwise apply, a public authority may "take account only of the costs it reasonably expects to incur in relation to the request in-
  - a) determining whether it holds the information,
  
  - b) locating the information, or a document which may contain the information,
  
  - c) retrieving the information, or a document which may contain the information, and
  
  - d) extracting the information from a document containing it."
  
- 6 Regulation 4(4) of the Regulations provides that where costs are attributable to the time that is expected to be taken by persons undertaking the activities specified in regulation 4(3), "those costs are to be estimated at a rate of £25 per person per hour". £450 is therefore the equivalent of 18 hours work.

#### The Commissioner's Decision

- 7 The Information Commissioner in his Decision Notice (DN) of 6 March 2013 has correctly set out the chronology leading up to this appeal.

### The Appeal to the Tribunal

- 8 On 18 March 2013 the Appellant submitted an appeal to the Tribunal (IRT). Confusingly Mr Woodin submitted his appeal against the Decision Notice on a form intended for an application for permission to appeal against the decision of a First Tier Tribunal. In the 'errors of law' section Mr Woodin states: 'I feel the decision is disproportionate to the aim sought in that the police's estimate of £450,000 is not relevant when I as the victim of sexual abuse at the two named schools of Waterside and Cliffdale the police should have been forced to do all I had asked for from Hampshire police in my first original request'

### The Questions for the Tribunal

- 9 The Tribunal decided that the sole question for them was to consider whether the work involved in answering Mr Woodin's application under FOIA would, on the balance of probabilities, have involved more than 18 hours work

### Evidence & Submissions

- 10 This matter was considered by the Tribunal by way of a hearing on the papers alone. Written submissions were received from the Commissioner alone. It was not altogether clear to the Tribunal whether or not the public authority had been joined or offered the opportunity to be joined as a second respondent.

### Conclusion

- 11 The Tribunal had before it information from the public authority, Hampshire Constabulary, which contained a calculation that dealing with Mr Woodin's request would take 18,000 hours involving a cost of £450,000. This was based on an examination of 18,000 file boxes with each examination taking

an hour.

- 12 Mr Woodin did not seek to challenge this estimate or to provide an alternative calculation of the time that might be required. He appeared to be asserting that the time and costs limits were irrelevant given the seriousness of the matters he was enquiring about.
- 13 The Tribunal felt that there might be some grounds for contending that one hour per file box was an overestimate of the time required but noted that even if this time estimate was drastically reduced to 6 mins per box it would still produce an overall time estimate of 1,800 hours and a total cost of £45,000. To bring the time and costs down to the level in the Fees Regulations would mean spending only 3.6 seconds on each file box. The Tribunal considered this to be entirely unrealistic.
- 14 Consequently, the Tribunal unanimously concluded that, on the balance of probabilities, the work involved in responding to Mr Woodin's request would have far exceeded the time and costs limits in the Fees Regulations and that the exemption in s.12 FOIA was rightly relied upon. The appeal is therefore dismissed.

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 19 August 2013