



Tribunals Service
Information Tribunal

Information Tribunal

Appeal Number: EA/2006/0059

Freedom of Information Act 2000 (FOIA)

Determined upon the Papers

25th April 2007

Decision Promulgated

5th June 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Fiona Henderson

And

LAY MEMBERS

Michael Hake

And

David Sivers

Between

Mr Luc James Meunier

Appellant

And

Information Commissioner

Respondent

And

National Savings and Investments

Additional Party

Decision

The Tribunal amends the Decision Notice (FS50101920) dated 25th July 2006 to the following extent by substituting the paragraphs set out below for those in the original Decision Notice:

- 5.1 The complainant requested:
- all information about the declared Premium Bond Winners for November and December 2004 and January 2005,
 - if that was too much, information of winners of £5,000 up to £1,000,000 for the same period,
 - he indicated that he would accept copies of bank statements.
- 5.2 The Tribunal is satisfied that the information requested insofar as it identifies a Premium Bond winner or holder falls within the description specified under Regulation 30 of The *Premium Savings Bond Regulations 1972, SI 1972 No 765* (“the 1972 Regulations”) and is therefore exempt from disclosure by virtue of section 44 of the Act. As section 44 is an absolute exemption it is not subject to the public interest test under section 2 FOIA.
- 5.3 The remainder of the information requested is so voluminous that the public authority is entitled to rely upon section 12 FOIA in that they estimate that the costs of complying with the request would exceed the Appropriate Limit as provided for under *The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI 2004 No. 3244*.

5.4 The Tribunal is further satisfied that the public authority did not comply with section 17(1)(b) and (c) FOIA in that the refusal notice:

- Failed to specify which exemptions related to which parts of the information requested,
- Failed to state why the exemption applied to specific parts of the information.

In that although the refusal notice relied upon section 40 FOIA, the refusal notice failed to specify that section 44 FOIA (reliant upon Regulation 30 of the 1972 Regulations) was also relied upon and

- The refusal notice did not comply with section 17(5) FOIA in that it did not state that section 12 FOIA was relied upon in relation to the remainder of the information.

5.5 Additionally the Tribunal upholds the Commissioner's decision that the public authority has not dealt with the Complainant's request in accordance with section 10(1) – in that it exceeded the statutory time limit for responding to a request made under section 1(1).

5.6 The Tribunal also considers that in light of the lack of clarity in the original request, and the amount of information potentially covered by the request that the public authority ought to have sought clarification from the Applicant and assisted him to focus his request tightly before purporting to answer the request pursuant to their duty under section 16 FOIA.

6. Action Required

6.1 In light of the finding that the information is either exempt from disclosure under section 44 or that the public authority is entitled to rely upon section 12 FOIA no further action is required.

Reasons for Decision

The request for information

1. This is an appeal by the Appellant (Mr Meunier) to the Information Tribunal under section 57 of the *Freedom of Information Act 2000* (FOIA).
2. Mr Meunier has been engaged in correspondence with National Savings and Investment (NS&I) about Premium Bonds since 1994. Having purchased bonds in the 1960s he now believes that the system is a fraud on the public and that no random draw is held each month. He is further convinced that no (or only token) prizes are paid out each month and that such lists of “winning numbers” as are published are a fiction. In consequence he does not believe that there are any high value prize winners.
3. Mr Meunier has exhausted various other legal avenues in an attempt to demonstrate that the scheme is fraudulent including an investigation by the Independent Adjudicator for National Savings and Investments who rejected Mr Meunier’s claims on 10th February 2005.
4. Following the introduction of the *Freedom of Information Act* in January 2005, Mr Meunier wrote to the Director of Savings on 12th January 2005 in the context of the investigation by the Independent Adjudicator referring specifically to exercising his “freedom of information” and asking for information relating to the Independent Adjudicator and adding:
“I will also insist to have all information about the last 3 months of well over 3 millions Premium Bond winners and well over £200 million of prizes published”.


5. The Tribunal has not been provided with a copy of the reply to that letter dated 18th January 2005, which apparently enclosed a complaint leaflet but not the information that had been requested. The additional information requested relating to the Independent Adjudicator, which was outlined in the letter of 12th January 2005, has not been pursued before the Commissioner or in this appeal and is therefore not considered further in this decision.

6. Mr Meunier wrote again to the Customer Services Team Manager of NS&I, on 22nd January 2005 in a letter headed:
*“Freedom of Information Act January 2005
Complete Premium Bonds winners informations”*
This was in response to the letter of 18th January 2005 and amplified his request of 12th January 2005 relating to Premium Bonds in the following terms:
“all informations about the last three months of declared Premium Bond Winners are important for my next move, if this is too much to ask, I may accept informations of winners of £5,000 up to £1,000,000 for November and December 2004 and January 2005, to make it even easier I will accept copies of Bank statements”.

7. NS&I purported to answer this request by a letter dated 3rd February 2005 in which they stated that the lists of winning numbers were published and gave details of where they could be found adding that they could not give:
“details of the names of all prize winners. One of the main features of the Premium Bond Scheme is that we do not disclose the details of prize winners names and addresses”
This letter did not refer to FOIA at all and it is not clear that the authors had addressed their minds to the duties, obligations and exemptions set out in the Act. Not only did the letter fail to quote which sections of FOIA were relied upon in support of the exemptions being relied upon, neither did it provide any details of any internal appeal or review available or the route of appeal to the

Information Commissioner. The letter also did not cover the full extent of the information making no mention of the request for copies of bank statements.

The Complaint to the Information Commissioner

8. Mr Meunier complained to the Information Commissioner's Office on 23rd May 2005 and he was then advised by them on 17th and 29th June 2005 to exhaust the Authority's internal complaints procedure before a complaint to the Commissioner could be considered.
9. Mr Meunier replied in a letter to the Commissioner received by them on 15th July 2005 in which he explained that he would pursue the internal complaints procedure, and stressed that his interest was:
"the financial informations where money has changed hands to over one million Premium Bonds winners is very important to me to continue my campaign".
10. Mr Meunier then applied to NS&I for the internal review on 11th July 2005. This was set out in the following terms:
"to receive informations about declared large sum of money, of about £70 million being paid to well over one million Premium Bonds winners for each of the months of November, December 2004 and January 2005. The only informations I needed are informations which shows that money has actually changed hands during such transaction i.e. bank statements..."
11. This was not responded to until 23 February 2006. During the intervening period Mr. Muernier continued to correspond with the ICO. In response to a letter from the Information Commissioner dated 19th December 2005 dicating that the case had yet to be allocated, Mr Meunier replied by letter dated 21st December 2005 stating:

“You have the time to write to me, but no time to write a simple letter to NS&I asking for information about the vast amount of monies of almost £70m declared payments to Premium Bond winners for each of the months of November & December 2004 and January 2005.

*As I only need copies of Bank Statements to prove that monies partly from interest of my investments has actually changed hands.
..”*

12. Mr Meunier made a fresh request for information on 9th January 2006 to NS&I for information relating to £50 and £100 winners in November, December 2005 and January 2006 and payments to winners with prefixes of 100-101-102 including when they were issued. This fresh request is separate from the request which is the subject of this appeal, consequently it is not dealt with in this decision.

13. On 18th January 2006 Mr Ebbitt wrote on behalf of the Information Commissioner to Mr Meunier indicating that the complaint was being raised with NS&I and seeking to clarify the terms of the request:
“I understand the information you requested to consist of the bank statements of the accounts to which payments were made from the Premium Bond prize draw ... (for November/December 2004 and January 2005).”

14. He wrote on the same day to Mrs Angela Bascombe-McCarthy of NS&I, stating that Mr Meunier *“specifically requests proof in the form of bank statements showing that the prizes have been paid”* and asking:
 - For copies of any responses sent to Mr Meunier in relation to his FOIA request,
 - For clarification of whether NS&I held the information requested,

- If the information was held, for confirmation that it has either been disclosed or a valid refusal notice issued...

Mr Ebbitt added that "*I realise that it is unlikely you hold the information requested*" and indicated that he was primarily interested in the procedural issues surrounding Mr Meunier's complaint.

15. Mr Ebbitt spoke to Mr Meunier by telephone on 9th February 2006 in which Mr Ebbitt indicated that:
 - He considered it unlikely that NS&I held the bank statements of Premium Bond prize winners,
 - He would nevertheless see if any other information is held which might prove that the prizes had been paid out.

16. Following chasing letters from the Commissioner's office and a telephone call, the Commissioner received a response on 1st March. This included a letter dated 23rd February 2006 to Mr Meunier providing NS&I's response to Mr Meunier's request for an internal review dated 11th July 2005. This letter provided the following information:
 - The information is held by NS&I but is exempt from disclosure under section 40 FOIA,
 - The winning bond numbers of prizes of £5,000-£1,000,000 for November – December 2004 and January 2005.
 - An explanation of how ERNIE (the Electronic Random Number Indicator Equipment) works.

17. In letters to NS&I dated 3rd of March (copied to the Commissioner) Mr Meunier indicated that he was not satisfied with this information in particular because it contained "*no information of payments made to these so called winners, which is the information I requested*".

18. NS&I wrote to the Commissioner in a note received 7th March 2006 indicating that in response to Mr Meunier's letters of 3rd March 2006

they had now classed this as a vexatious request and would not be responding.

19. Mr Ebbitt wrote to Mr Meunier on 27th March 2006 indicating that he did not propose to issue a Decision Notice, and that the response of 22nd February (by which the Tribunal takes him to mean the letter dated 23rd February) adequately responded to the request in that it specified that the information requested was exempt by virtue of section 40 of the Act. Mr Ebbitt further explained that:

“A bank statement or any other information which would identify a winner is likely to constitute personal data, as information of this description would identify a living individual and tell you something of significance about that individual.”

20. He further added that NS&I had stated that any further requests for the same or similar information would be considered to be vexatious and that the Commissioner would be likely to find in favour of the NS&I in relation to this matter as in their view *“such requests would serve no serious purpose or value. This view is based on the fact that the information is evidently exempt from disclosure and that the NS&I have provided as much information as possible in relation to this subject matter...”*

21. Mr Meunier asked the Commissioner to issue a decision notice by letter dated 4th April 2006. He explained inter alia:

“my only request was informations of bank statements to Premium Bonds Winners which will only shows that such transaction did actually takes place and does not contravene any data protection Act..

Bank statements will not disclosed whether the bonds winners was in fact premium bond holders...”

22. Mr Ebbitt wrote to Mrs Bascombe-McCarthy of NS&I again on 3rd May indicating that a Decision Notice would be issued but that:

“I do not intend to change the outcome of my original investigation...”

In order to evidence my decision, I would appreciate it if you could provide a copy of an NS&I bank statement. I understand that this should show that payments are made to the winners of premium bond winners by cheque and presumably include a reference for that cheque. Therefore this should reflect the information published proactively by NS&I about winning bonds each month...”

23. In their response dated 12th May 2006 NS&I provided:

- The Prize fund calculation for January 2006,
- Part of their bank statements for December 2005 and January 2006
- A notification of the amount of prize money to be debited from NS&I's account,
- Part of the reconciliation of warrants paid for December 2005 and
- A redacted warrant to an individual prize winner to exclude personal data,

Along with an explanation of the banking evidence which can be summarised as follows:

- NS&I hold a Premium Bond account with the Bank of England, into which the Treasury pays the prize fund amount each month.
- The prize fund is calculated upon one month's interest on each eligible bond.
- The number of prizes is determined by the amount available.
- The prize payments are made from the NS&I Premium Bond Account.
- The £1 million and £100,000 prizes are issued by CHAPS. All other prizes are paid by warrant. £5,000+ prizes also require a claim form to be filled in.
- The winners pay the warrant into their own bank account to claim the prize, hence a prize awarded in one month may be claimed in a later month.

- The warrants paid in a single month appear as a single bulk payment figure on the NS&I bank statement.
- The bulk figure is supported by an electronic file, enabling each paid warrant to be reconciled.
- NS&I also keep copies of the individual warrants that have been paid which could be cross matched.

In this letter for the first time NS&I also relied upon its obligation of secrecy as per regulation 30 of the *Premium Savings Bond Regulations 1972* (“the 1972 Regulations”).

24. Mr Meunier was not provided with this information at this stage, however, he did raise the point in his letter to the Commissioner dated 3rd June 2006 that:

“Bank statements will not provide informations about the winners which will breach any Data Protection Act”.

25. The Decision Notice (Reference Number FS50101920) dated 25th July 2006 found as follows:

- The complainant requested the amounts paid to individual bond winners over a specific period of time.
- The information requested fell within regulation 30 of the 1972 Regulations and was therefore exempt from disclosure by section 44 FOIA .
- NS&I had not dealt with the request in accordance with section 10(1) in that it exceeded the statutory time limit for responding to a request made under section 1(1).
- Since the information was exempt from disclosure and the public authority has now responded under the Act and issued a valid refusal notice, no further action was required.

The Appeal to the Tribunal

26. The Appellant’s appeal to the Tribunal dated 14th August 2006 disputed the Decision Notice on the following grounds:

- a) The ICO had failed to investigate the complaint properly (because the DPA did not apply in relation to the information sought)
 - b) The bank statements would not provide the names and addresses of Premium Bond Winners and thus contravene the DPA
 - c) The 1972 Regulations did not apply because no law authorised the Treasury to raise funds fraudulently,
27. The Commissioner opposed the appeal on the grounds that his decision was correct. NS&I were joined as an additional party pursuant to Rule 7(2) of the *Information Tribunal (Enforcement Appeals) Rules 2005 SI 2005 No.14* on 26th September 2006 and also opposed the appeal on the ground that the Decision Notice was correct.
28. In addition to a reply, NS&I served a letter dated 10th November 2006 in which they provided a copy of the banking evidence and explanation of the evidence already provided to the Commissioner (paragraph 23 above).
29. Additionally, by letter dated 16th January 2007, and despite their contention that the information requested by Mr Meunier was exempt, NS&I provided an explanation of and copies of extracts of bank statements, and supporting documents for the period covered by the request (as well as for the period that was the subject of his second request which is not part of this appeal). Copies of the higher value winning bond numbers and the gender of each winner and date of purchase (information available elsewhere) for the same two periods were also provided in an effort to assist. The winning bond numbers were provided off an internal system and all numbers were recorded in an 11-digit format.

Determination on the Papers

30. With the consent of all parties the case has been determined upon the papers. This was set down at the Directions hearing on 29th November 2006 and no parties at that hearing advanced any reasons why an oral hearing was required. Mr Meunier subsequently made reference to an “oral” hearing in correspondence with the Tribunal and the Commissioner and NS&I. He spoke to a Proper Officer on 6th February 2007 expressing concern about carrying heavy papers to the hearing. It was explained to him that the hearing was a paper determination and he did not therefore need to attend. He asked what he should do if there was anything further he needed to submit and was told that he should send it to the Tribunal so that it could be considered. Mr Meunier did not in that conversation ask for the paper determination to be changed to an oral hearing, neither did he submit any further material prior to the Tribunal writing to him on 23rd February 2007.
31. The Tribunal wrote to all parties on 23rd February 2007 to ensure that all parties understood the procedures and consequences of a paper determination. A direction was issued that if any party did not wish the hearing to be determined upon the papers they would need to write to the Tribunal explaining why they wanted to attend the hearing and how this would help the Tribunal to decide the Appeal.
32. Mr Meunier made no such application, he wrote in response to the letter of the 23rd February 2007 explaining that he was in poor health and making further comments upon the evidence in the case.
33. The Tribunal is therefore satisfied that all parties were content for the case to proceed to a paper determination. The substantive paper determination commenced and was later adjourned on 8th March 2007. Additional representations and evidence were sought

pursuant to further directions dated 13th March 2007. The additional evidence and submissions related to (inter alia):

- a) Whether NS&I held a complete copy of their bank statements showing Premium Bond payments and reconciliation sheets for warrants presented for November 2004, December 2004, and January 2005 and a copy of each warrant (redacted) for those dates.
 - b) Whether (in the event that the Tribunal found that the information itemised in Paragraph 33(a) above was disclosable under the Act) they relied upon section 12 FOIA, and if so to provide an estimate of the costs already incurred and the future costs involved in accordance with *The Freedom of Information and Data Protection [Appropriate Limit and Fees] Regulations 2004 SI 2004 No. 3244*.
 - c) Clarification of the reason why a recent list of winning bonds appeared to consist of exclusively 11 digit numbers.
34. Upon receipt of further material from all parties pursuant to the directions of 13th March 2007 the Tribunal reconvened to consider and determine the case on the papers on 25th April 2007.

The Issues for the Tribunal to decide

35. Upon consideration of the Grounds of Appeal, the replies and the submissions pursuant to the adjourned hearing, the Tribunal is satisfied that the issues that it is required to determine are:
- a) Whether the Information Commissioner had failed to investigate the complaint properly,
 - b) Whether all the information requested was exempt pursuant to section 44 FOIA in reliance upon regulation 30 of the 1972 Regulations,

- c) If not all the information requested was exempt whether it had now been disclosed to Mr Meunier,
- d) If not all the disclosable information had been provided, whether section 12 FOIA applied to relieve NS&I of the obligation to disclose the information requested.

In light of its findings in relation to section 44 FOIA the Tribunal has not found it necessary to consider the applicability of section 40 FOIA and the DPA which it considers would have covered the same material exempted by section 44 FOIA.

36. The Tribunal has received evidence from NS&I that ERNIE was reconfigured in 2005 to enable 11 digit numbers to be drawn thus increasing the available pool of Bond Numbers available for sale (see para 67 below). Mr Meunier also submitted in his letter of 19th April 2007 that “*ERNIE should have always been left as it was and discarded when it reaches the end of its life*” rather than reconfigured. On the evidence before it, the Tribunal is satisfied that the machine was so reconfigured in 2005, consequently it does not consider that the propriety or otherwise of this course of action is an issue that it is required to decide within the terms of this appeal.

The Powers of the Tribunal

37. The Tribunal's powers in relation to appeals under section 57 FOIA are set out in section 58 of FOIA, as follows:

(1) If on an appeal under section 57 the Tribunal considers-

- (a) that the notice against which the appeal is brought is not in accordance with the law, or*

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

38. The question of whether the Commissioner investigated the complaint adequately is a question of fact. Whether the exemption in section 44 FOIA or the provisions of section 12 FOIA apply to the disputed information is a question of law based upon the analysis of the facts. The Tribunal may substitute its own view for that of the Commissioner on this issue if it considers that the Commissioner's conclusion was wrong. This is not a case where the Commissioner was required to exercise his discretion. Neither section 44 or section 12 FOIA require consideration of the public interest test.

39. Mr Meunier objects to the reliance by NS&I on the 1972 Regulations. His contention is that the Regulations that were in place in 1956 when Premium Bonds were first introduced should continue to be binding and that the Tribunal ought to ignore any subsequent amendments to the Regulations. The Tribunal rejects this contention and is satisfied that the law that was in place upon the date when the request was considered is the law that should be applied in considering whether section 44 FOIA applies.

Whether the ICO had failed to investigate the complaint properly.

40. Mr Meunier argued in this ground of appeal that the Commissioner had failed to investigate the complaint properly because the DPA did not apply to the information he was requesting. Both the Commissioner and NS&I argue that this ground is therefore misconceived and need not trouble the Tribunal, because no finding was made in the Decision Notice relating to the DPA.
41. The Tribunal considers it inappropriate to tie the complaint (namely that there was no proper investigation) to the DPA when Mr Meunier is a litigant in person who may well not understand the distinction between the DPA (relied upon in the refusal notice and the Commissioner's letter of 27th March) and regulation 30 of the 1972 Regulations)/section 44 FOIA exemption both of which relate to the prohibition on disclosing personal details.
42. The Tribunal is satisfied that Mr Meunier's reference to the DPA in this context is an attempt to challenge the finding that none of the information could be disclosed because to do so would have revealed personal details.
43. In dispute between the parties is what exactly was encompassed within Mr Meunier's original request. The correspondence relating to the initial request has been set out in some detail (from paragraphs 4-25 above) as it is clear to the Tribunal that there has never been clarity as to what exactly Mr Meunier has been requesting. The Commissioner and NS&I suggest in their submissions that there is a purported change to Mr Meunier's request. They suggest that the request mutated after the notice of appeal was lodged to beyond that which was originally requested and was information that would not have been encompassed in the original decision; namely information of *"payments made to*

Premium Bond winners of higher prizes not their names and addresses”.

44. The Tribunal does not agree that there has been a change to the ambit of the information requested. The original request on 12th January 2005 for “*all information*” was ignored and the request that has been taken as the starting point by the Commissioner and NS&I is the “clarified” request of 22nd January 2005. This request is potentially very wide ranging and unclear:
- “all informations about the last three months of declared Premium Bond Winners are important for my next move, if this is too much to ask, I may accept informations of winners of £5,000 up to £1,000,000 for November and December 2004 and January 2005, to make it even easier I will accept copies of Bank statements”.*
45. At no stage did NS&I ask precisely what “information” was required or what was meant by “copies of Bank statements”. Information could include: the winner’s name and address, the date and place of purchase of the number, it could have been a request for information linking the bond number to a specific winner, it could also have included the date that the prize was claimed, where and when it was paid out and how many prizes each individual winner had won in that draw. It may have included a link to previous draws (e.g. how many times a bond winner that won in November 2005 had won before). Equally bank statements could have been bank statements belonging to winners or the bank statements belonging to NS&I and copies of the claim forms, warrants and reconciliation sheets supporting the payment claims.
46. This list is not meant to be exhaustive but illustrative. The Tribunal accepts that much of this information would be exempt under FOIA: some of this information would be available from other sources, and some would be likely to fall within the DPA exemption and regulation 30. However, the Tribunal is satisfied that the request

was sufficiently unclear and potentially wide ranging that NS&I would have been unable to fulfil their duty under section 1(1) FOIA to inform Mr Meunier that they held the information or to provide it to him without a clearer definition of what he was asking for. Whilst section 1 (3) FOIA is indicative that circumstances can arise where a public authority may reasonably require further information before complying with section 1(1) it does not detail the circumstances where it would be reasonable to seek clarification. However, the Tribunal is satisfied that this is a case where NS&I ought not to have used their prior dealings with Mr Meunier as a basis upon which to define the request, but should have specifically asked him to clarify the parameters of his request.

47. Additionally, NS&I were under a duty to provide advice and assistance pursuant to section 16 FOIA. Section 16(1) FOIA provides:

“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”.

When faced with an unclear request rather than place their own definition upon the information being requested, it would be of assistance to the applicant if they were advised that the request was unclear and this was the way that the public authority proposed to define the request thus enabling the applicant to clear up any confusion and if necessary refine his request.

This is integral to the responsibilities of public authorities under FOIA. The Lord Chancellor’s Code of Practice on the Discharge of Public Authorities’ Functions under Part I of the Freedom of Information Act 2000 states:

“9 Where the applicant does not describe the information sought in a way which would enable the public authority to identify or locate it, or the request is ambiguous, the authority should, as far as

practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested. ... It is important that the applicant is contacted as soon as possible ... where more information is needed to clarify what is sought.

10 Appropriate assistance in this instance might include:

- *providing an outline of the different kinds of information which might meet the terms of the request;*
- *providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of information held by the authority;*
- *providing a general response to the request setting out the options for further information which could be provided on request;*

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.”

48. Had NS&I sought to clarify the request either as envisaged under section 1(3) or section 16 FOIA, Mr Meunier would have been able to define more clearly the terms of his request. Mr Meunier has from time to time tried to do this in the absence of any advice and assistance (see his letters of 11th and 15th July and 21st December 2005 paragraphs 9-11 above). He stresses that what he wants is information that shows that “**money has changed hands**” i.e. **bank statements**. The Tribunal is satisfied that this information was covered by his original request and that 7 months before the NS&I issued their refusal notice pursuant to his application for a review that they were aware that Mr Meunier wanted evidence of payments i.e. money changing hands.

49. The Commissioner makes the point that the question for the Tribunal to address is whether the public authority acted lawfully in

the way in which it dealt with the request **at the time that the request was made** (*DTI v IC EA/2006/0007*). That case dealt specifically with the time when the public interest test should be considered, and does not specifically deal with a situation where a request is said to have been refined through correspondence. However, the Tribunal is satisfied that the application for “*all information*” and the clarification that “*bank statements*” would be acceptable was apparent from the original request but not considered by NS&I until specifically told to by the Commissioner after they had refused the original decision and upheld that refusal on review, and no attempt made to address it until after the Appeal had been lodged.

50. The Tribunal finds it surprising that the Commissioner made no reference to section 16 FOIA in his decision notice in light of the lack of clarity in the original request and the consequential difficulty in defining the information that was sought and held.
51. From the non-exhaustive list given above (paragraph 45 above) it is clear that the Commissioner found that all the information was exempt when he had not considered all the information that might be held and that might be covered under the request. The Commissioner sought to define the request as “*the bank statements of the accounts to which payments were made*” (letter to Mr Meunier dated 18th January 2006). The Commissioner then (in apparent contradiction) in a letter of the same date to NS&I summarised the request as “*proof in the form of bank statements showing that the prizes have been paid*”. The Tribunal considers that both sets of information would be included in Mr Meunier’s original request (despite it being highly improbable that NS&I did hold the bank statements belonging to winners). Despite having sought to define the request as the bank statements of winners, he never asked NS&I whether that information was held or asked for copies of it. The Commissioner’s decision summarised the

substance of the request as “*the amounts paid to individual bond winners over a specific period of time*” when this was not the entirety of the request.

52. The Tribunal considers that this shifting definition of what the request encompassed is an indication that the investigation was incomplete when the Decision Notice was issued.
53. The response from NS&I to Mr Meunier dated 23rd January 2006 and copied to the Commissioner indicated that they did hold “the information”. Again it is not clear what that information was. Despite this being contrary to the Commissioner’s expectations, he did not follow up this assertion, or ask them to specify what information they held. The Tribunal is therefore satisfied that the Commissioner was not in a position to conclude what information was held, whether any could be disclosed in redacted form and therefore whether it was entirely covered by the exemptions relied upon at the time of his preliminary decision or the decision notice.
54. It was Mr Meunier who pointed out to the Commissioner that the information that was provided contained “*no information of payments made to these so called winners, which is the information I requested*”. NS&I take this as an indication that Mr Meunier wanted the names of the winners, however, the Tribunal is satisfied that whilst Mr Meunier may well have wanted the names, he also wanted evidence of the **payments**.
55. In concluding that all the information was exempt in his original finding, it is clear that the Commissioner has accepted a bare assertion that the provision of the information would contravene the DPA without having been provided with a sample of information. His assertion on 27th March 2006 that the NS&I had adequately responded to the request would appear to be flawed in light of his conclusion that:

*“A bank statement or any other information **which would identify** a winner is likely to constitute personal data, as information of this description would identify a living individual and tell you something of significance about that individual...”*. He does not consider whether the bank statement showing payments out, would in fact identify a winner and whether they could be redacted so as to show prizes being paid out, but not identifying the individuals concerned.

56. The Commissioner also told Mr Meunier (by letter dated 27th March) that future requests were likely to be upheld as vexatious, based on the *“**fact that the information is evidently exempt from disclosure and that the NS&I have provided as much information as possible in relation to this subject matter.**”* This is not something upon which the Tribunal feels that the Commissioner was in a position to comment or conclude at that stage, since he had not clarified what the information was that was sought or held, in what way it actually (rather than theoretically) contravened the DPA and by not having requested at this stage any banking information he had accepted a bare assertion from the NS&I with no supporting evidence that the exemptions were engaged.
57. The Tribunal wishes to comment at this stage that in light of Mr Ebbitt’s assurance to Mr Meunier on 9th February 2006 that he would investigate whether NS&I held the bank statements he appeared to be seeking, the original proposal to close the complaint without issuing a Decision Notice was premature since no banking evidence had ever been sought. Equally the Tribunal considers that it was inappropriate for Mr Ebbitt to indicate in his letter of 3rd May 2006 that he had already made his mind up and did not intend to change his decision, despite the fact that evidence was now sought that he had never had an opportunity to consider in coming to that original decision.

58. The Commissioner wrote to Mrs Bascombe-McCarthy of NS&I again on 3rd May asking for “a copy of an NS&I bank statement to show that payments are made to the winners of premium bond winners by cheque and presumably include a reference for that cheque. Therefore this should reflect the information published proactively by NS&I about winning bonds each month.”

The terms of this request for information do not appear to envisage personally identifying information being provided. Whilst the Tribunal deals below (para 60 et seq) with the issue of whether the information was in fact exempt under section 44; the banking evidence which was supplied at this stage (which has subsequently been disclosed to Mr Meunier) did not identify any individuals or had been redacted to prevent such identification.

59. The Tribunal also finds it surprising that the Commissioner did not itemise the failure of the refusal notice to comply with section 17 FOIA. Whilst it is accepted that the refusal notice (the letter of 23rd February 2007) specified that section 40 FOIA was relied upon in that individuals would be identified, the Commissioner has made no attempt to link that to the actual banking evidence in front of him, and the fact that the identifying data could be redacted.

60. By the time of the Decision Notice, NS&I were relying upon section 44 FOIA in conjunction with regulation 30 as an exemption in support of their decision to withhold the information. This was the exemption that the Commissioner chose to rely upon in his decision notice, yet in breach of section 17(1)(b) and (c) FOIA the refusal notice:

- Failed to specify that section 44 FOIA related to certain parts of the information requested,
- Failed to state why the exemption applied to specific parts of the information.

61. Section 17 FOIA provides:

(1) A public authority which, in relation to any request for information, is to any extent relying 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.*

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 .. applies must, within the time for complying with section 1(1) give the applicant a notice stating that fact.

62. This Tribunal (differently constituted) established in *Bowbrick v Information Commissioner EA/2005/006* that the Information Commissioner does not ordinarily have a duty to “look” for exemptions that might apply. This Tribunal finds no reason to dissent from that proposition and as such does not criticize the Commissioner for his failure to consider whether section 12 FOIA was engaged (and consequently whether section 17(5) FOIA had been complied with). However, in failing to consider what information was encompassed within the request, the Commissioner did not consider fully whether section 1(1) FOIA had in fact been complied with when from the pagination of the specimen provided, and the number of prize winners (and hence warrants) which ran into the millions, it should have been obvious that the amount of the potential information available might prove an issue.

63. The Tribunal is therefore satisfied that the Commissioner’s investigation of the complaint was incomplete.

Whether all the information requested was exempt pursuant to section 44 FOIA in reliance upon regulation 30 of the 1972 Regulations

64. Section 44 FOIA provides as follows:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation or

(c) would constitute or be punishable as a contempt of court....

Under section 2(3)(h) FOIA this is designated as an absolute exemption, so no public interest test applies.

65. Regulation 30 of the 1972 Regulations provides as follows:

(1) A person employed in connection with business arising under these Regulations shall not disclose to any person...the name of the purchaser or holder of any bond, the number of bonds purchased or held by any person, or the amount paid to any person in respect of a bond

(2) [(1) above] shall not prevent the disclosure by a person authorised for the purpose by the Director of Savings of information to any person in connection with an offence committed with reference to any bond or for the purpose of ascertaining whether or not an offence has been committed..."

66. Whilst the Tribunal has considered all Mr Meunier's representations that the Premium Bond Draw is a fraud, and that ERNIE does not

have the technical capability to draw numbers of different lengths at random the Tribunal is satisfied that the authenticity of the draw is only an issue in relation to the applicability or otherwise of regulation 30(2) of the 1972 Regulations.

67. The Tribunal has had sight of the Independent Adjudicator's report and is satisfied from that that a draw takes place and winners are selected. The Tribunal takes into consideration the auditing and regulatory safeguards that are in place and the evidence that it has seen in relation to the procedures adopted for the draw. From the banking evidence that it has seen the Tribunal is satisfied that payments are made to those identified as winners. In addition the Tribunal is satisfied by the explanation provided in the witness statement of Alcindo Ifill that ERNIE was reconfigured in 2005 to enable 11 digit numbers to be drawn at random and e.g. 8 digit numbers are selected in an 11 digit format with "000" at the beginning to allow all issued bonds to have an equal chance of selection. Consequently the Tribunal is satisfied that the information held by NS&I and encompassed in Mr Meunier's request is genuine and that there is no evidence that it has seen that satisfies it that the Premium Bond scheme is a fraud, or that section 30(2) therefore applies.
68. The Tribunal would indicate at this stage that whilst regulation 30(2) refers to "any person" the above paragraph should not be taken as authority that the Tribunal finds that in the event that there were some evidence of a fraud that section 30(2) should be read as entitling disclosure to a crusading member of the public under the FOIA provisions rather than enabling disclosure to be given to the law enforcement authorities.
69. The information that remains withheld by way of redaction (e.g. the specimen warrant) includes the name of the winner and other identifying information (e.g. the bank account number). Whilst

regulation 30 does not specifically refer to the bank account number of the bond winner, the Tribunal is satisfied that because of the unique character of a bank account number this would directly identify the amount paid to a winner pursuant to a bond and thus contravene regulation 30(1)

70. The Tribunal is therefore satisfied that NS&I are prohibited by an enactment (the 1972 Regulations) from providing any information identifying the winner or holder of a bond and that as such much of the information encompassed within Mr Meunier's original request was exempt by reason of section 44 FOIA. However, the Tribunal is also satisfied that there was information which was held and which could have been provided without infringing the prohibitions in regulation 30 either in its entirety or through redaction as evidenced by the disclosure that has in fact been made in this case of sample bank statements, reconciliations and redacted warrants.

If not all the information requested was exempt whether it had been disclosed to Mr Meunier,

71. It is clear from NS&I's initial response and subsequent correspondence with Mr Meunier that they interpreted the request through their prior knowledge of Mr Meunier and have made assumptions as to his motivation and likely response in their consideration of the information held. The Tribunal's concerns that no clarification was sought are set out above (para 46 et seq). The *Freedom of Information Act* is motive and applicant blind. There is no provision for a public authority to decide whether the application merits a response, or to appease what they consider the motive to be behind the request, instead of answering the request itself. A request should be answered directly and if a public authority feels that providing the information requested will not actually meet the needs of the requestor they are at liberty to supply extra information or to seek clarification under section 16 FOIA however, they are not

entitled to make unilateral value judgments and fail to comply because they feel that the applicant will not be content with the answer.

72. The Tribunal notes that NS&I have recently made attempts to provide information and explanations to Mr Meunier in an effort to satisfy his request for information (in the face of provocative correspondence from him). Whilst the Tribunal acknowledges the good intentions behind this and notes that such an approach under section 16 FOIA would have been an appropriate starting point, in line with the Code, when the request was originally received, the Tribunal is still concerned that they are preoccupied with the perceived motive of the request and Mr Meunier's historical dealings with NS&I rather than addressing the actual request. They have provided incomplete "sample" information for the wrong dates, which has necessitated them re-supplying the sample information for the right dates, and repeated explanations of how ERNIE works (despite that information not being part of the request but part of Mr Meunier's preoccupation with Premium Bonds).

73. The Commissioner argues on the one hand that the Decision Notice should be upheld and that the information requested was exempt and then argues that "*to the extent that the request can be satisfied without contravening regulation of the 1972 Regulations, the Tribunal is invited to find that any relevant information has now been provided.*" This does not address the situation that the information provided is incomplete. No-one seeks to suggest that the information that has been provided has been provided in contravention of an exemption. Consequently, if the Tribunal considers that this information was included within the original request, it is bound to find that information was held which was not exempt and that this information was not disclosed pursuant to section 1(1) FOIA.

74. NS&I in their submissions argue that the information sought by Mr Meunier *“was to enable him to see that winners had received their money and would necessarily therefore have had to include private information as to the individual names, address and or bank account details of winners for the amounts and periods in question”*. They further admit that they “interpreted” the request in that way, as did the Commissioner. Additionally they rely upon Mr Meunier’s response to the disclosure that he has had (namely that it is fabricated and forged evidence) in support of this view.
75. The Tribunal accepts that some of the information that would have been encompassed in the original request would be exempt under the section 44 exemption relied upon. However, the obligation is for the public authority to consider the whole of the request and all of the information requested and the fact that not all of it can be provided does not exempt them from providing that which they can. Regardless of how dissatisfied Mr Meunier may be by the incompleteness of the information he receives, it is information that they are bound to provide unless another exemption applies, or Mr Meunier indicates that he no longer wishes to have it supplied.
76. NS&I rely upon the fact that the bank statements do not reveal the identity of winners or provide proof that individual, identifiable winners were paid as a reason that the information was not what Mr Meunier wanted. It is not possible to show that a payment has been made to a winner without an accompanying identification of that winner. However, the Tribunal is satisfied that through redaction of the warrants, NS&I can demonstrate that money has changed hands, and prizes have been paid out to individuals. The Tribunal has not had sight of redacted or complete claim forms from winners of prizes of £5,000 and above, but by the same token, if these are still held it is likely that they would assist in demonstrating that prizes have been claimed.

77. Similarly a unilateral decision to provide a partial sample or information relating to a different date to that specified within the request is not provided for within FOIA. If it is hoped that an example would suffice, the requestor would need to consent, if an example is proposed because section 12 FOIA is relied upon this must be specified. If the public authority feels that provision of the information would be expensive for them and insufficient for the purposes of the requestor they are entitled to write under section 16 FOIA stating that this information is available and to clarify that the requestor still wishes to be provided with a copy.
78. The Tribunal is satisfied that information was requested which could have been disclosed without breaching the exemption relied upon (section 44 FOIA). As evidenced by the sample already disclosed (para 29 above). The Tribunal is further satisfied that the following information was prima facie disclosable pursuant to the original request and has not been disclosed:
- A complete copy of the National Savings and Investments bank statements showing Premium Bond payments for November 2004, December 2004, and January 2005;
 - A complete copy of the reconciliation sheets for warrants presented in November 2004, December 2004, and January 2005;
 - A copy of each warrant (redacted as per the specimen already served) for prize winners for November 2004, December 2004, and January 2005;
- and that it is likely that the redacted claim forms of winners of prizes of £5,000 and above for those dates would also fall to be disclosed.

Whether section 12 FOIA applied to relieve NS&I of the obligation to disclose the information requested.

79. In light of their assertion in their letter to Mr Meunier dated 16th January 2007 that:

“The full reports cannot reasonably be provided as they are hundreds of pages long”

National Savings and Investment were asked to consider (in the adjournment directions dated 13th March 2007) whether they wished to rely upon section 12 FOIA in the event that the Tribunal found that the information itemised in paragraph 78 above, were held to be disclosable under section 1(1).

80. The Tribunal (differently constituted) considered in the case of *Bowbrick v Information Commissioner EA/2005/006* the circumstances where it was appropriate for the Tribunal to consider an exemption which had not been relied upon in the refusal notice or in front of the Information Commissioner. Whilst section 12 FOIA is not an exemption as such (in that it is not listed in section 2 FOIA) it does provide for circumstances where a public authority is not required to fulfil its obligation to provide information under section 1(1) FOIA.
81. In *Bowbrick* the Tribunal considered that whilst in most circumstances it was not for the Tribunal or the Commissioner to look for exemptions that might apply, if upon realizing that a piece of information had been overlooked and that an exemption applied and this was raised before the Tribunal, the Tribunal was bound to consider whether it applied. The Tribunal is satisfied that in providing a sample of information and informing Mr Meunier in the letter of 16th January that the full information could not reasonably be provided, NS& I were raising at this stage the applicability of section 12 FOIA notwithstanding their contention that the information that it applied to was not covered by Mr Meunier's original request.
82. In their further submissions NS&I confirmed that they still hold the information but that the cost of compliance would exceed the

appropriate limit set out in section 12 FOIA. Section 12 FOIA provides:

(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.....

(3) In subsection (1) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.....

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

83. Regulations have been made to cover the appropriate limit for local authorities and detailing the manner in which costs are to be estimated, these are to be found in *The Freedom of Information and Data Protection [Appropriate Limit and Fees] Regulations 2004, SI 2004 No. 3244.*

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

...

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

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it

4 (4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

84. NS&I are an executive agency of the Treasury and a Government department in their own right. Consequently, as a government department, for the purposes of Part I of schedule I of the FOIA, the appropriate limit is £600. The Tribunal accepts the evidence of Vibhuti Bhatt of NS&I that, if the warrants are extracted for those who won in the relevant months (rather than prizes claimed in the relevant months), the allowable time taken would exceed 50,000 hours. Even if the warrants were restricted to those warrants claimed in the relevant months the time taken would exceed 12,500 hours, which would considerably exceed the appropriate limit.

85. Whilst it is clear that some of the information (e.g. the bank statements and reconciliation sheets) could be provided within the allowable time, there is no basis in fact or within section 12 FOIA for distinguishing between the types of information available within the pool of information held and requested. NS&I have provided a sample of all types of information available to show how the system works and can therefore now be said to have complied with their section 16 FOIA obligations in that respect. The Tribunal is satisfied that, had NS&I realised that the request encompassed the information set out above, they would have relied upon section 12 FOIA and the Tribunal is further satisfied that the cost of retrieving

and extracting the information requested is substantially beyond the appropriate limit.

Fiona Henderson
(Deputy Chairman)

Dated this 5th day of June 2007