Dear Mr Keenan

Further to my email of 24 inst., I would advise that I have received and examined the response from QUB. Having fully considered the evidence in this case to include correspondence from you and QUB I would advise that it shall be my recommendation that QUB have correctly applied section 12 of the Freedom of Information Act (The Act) in this matter and therefore the information which you have requested has correctly been withheld.

For your assistance I feel it appropriate to explain my conclusions below although this is not offered in all cases.


In accordance with section 12(1) of The Act a public authority is not obliged to comply with a request for information where the cost of compliance would exceed the “appropriate limit” (i.e. the cost threshold of £450 or 18 hours work). However, on relying on the exemption, a public authority is obliged, under section 16(1) of The Act “to provide advice and assistance so far as it would be reasonable to expect the authority to do so”. In doing so, the public authority should consider providing an indication of what, if any, information could be provided within the cost ceiling.

Whilst I appreciate that the International Tree-Ring Data Bank does not contain the data which you requested, it is my conclusion that QUB in their refusal letter of 22 May 2007 satisfied section 16 by referring you to the Data Bank in an attempt to show you the information at no cost. In QUB’s detailed letter of response to me received on 27 November 2008 I am also satisfied with their submissions and explanations for their reliance on section 12.

Your second requested of 15 May 2008 was not treated as a refined or refocused request but as an entirely new request. It is The Commissioner’s view that where a public authority refuses a request under section 12 and the
applicant forms a refined request (potentially following advice and assistance under s16), the refined request should be treated as a new request, and the statutory time period for compliance commences on the date of receipt of that new request. Your second request was therefore considered on its own merit.

2. The Refusal Notice of 22 May 2008

(a) The time limit

I fully examined your correspondence and note your concerns regarding the time delays and in particular the time taken for QUB to issue a refusal notice. I would advise that section 17(5) of The Act states, a public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time limit for complying (i.e. promptly or within 20 days of receipt of the request) with section 1(1), give the applicant a notice stating that fact.

In my letter to QUB dated 15 October 2008 I advised them that they were technically in breach of section 17(5) given that the refusal notice was not issued until 22 May 2007. As ICO is the regulator I also provided QUB with guidance on refusal notices.

QUB have acknowledged that they were in breach of section 17(5) in this respect. However, they have explained and I have noted that Ms McVeigh provided you with updates on the ongoing progress of your request, by email on both 30 April and 11 May 2007. I note that Ms McVeigh apologised for the delay in both her formal response of 22 May 2007 and in her email of 11 May 2007. I also note that the issue was fully taken into account in QUB’s internal review of your complaint.

In any event I wish to clarify that such a technical breach would not mean that your request would be granted. The technical breach would as in this case simply be brought to the attention of the public authority to ensure future breaches were prevented.

(b) Notification of Internal/External Complaints Procedure.

Similar to the above in my letter to QUB of 15 October 2008 I also advised that they had also technically breached section 17(7) which deals with a refusal notice having to contain particulars of an internal review process and the right to lodge a complaint with The Information Commissioner. Again the guidance on refusal notices which I sent to QUB was sent to offer assistance and guidance to ensure that this would not happen again.

In their response QUB acknowledged that they had breached section 17(7) However, they have explained that this oversight was rectified as soon as it was brought to their attention. I note in the file that you contacted QUB to notify them of their failure to include the complaints procedure and that Ms McVeigh emailed it to you on the same day being 22 May 2007. I note that this was also acknowledged in Ms McVeigh’s letter to you of 21 June 2007
and that the complaints procedure was also provided to you on completion of the internal review process.

(c) The “cost limit”- reliance on section 12

I dealt with this issue in my letter to QUB and advised them that the Commissioner’s view is that a public authority seeking to rely on section 12 should (although not mandatory) include in its refusal notice, its estimate of the costs of compliance and how that figure has been arrived at, so at the very least, the applicant can consider how he might be able to refine or limit his request so as to come within the costs limit. I advised QUB that this had not been included in either of their refusal notices. I therefore asked QUB to deal with this in detail as I have explained below.

3. Clarification on the costs involved to support the reliance on section 12

I asked QUB to provide an estimate of the cost of compliance and how that figure had been arrived at. I sought an explanation of the steps QUB had taken to estimate that costs would exceed the “appropriate limit”. Section 12 The Act should be considered with the Freedom of Information and Data Protection (Appropriate Limit Fees) Regulations 2004 (Statutory Instrument 2004 No. 3244). If a public authority estimates that complying with a request may cost more that the cost limit, then consider the time taken 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.

I asked QUB to provide details of how the above activities are likely to exceed the “cost limit” in terms of hours required.

QUB have dealt with this matter in some detail and I am satisfied that the explanations and supporting evidence show that the cost limit would be exceeded in this case.

In considering points (a) to (d) above QUB took account of the following details:

(1) Information on the precise location of each tree, which has been used in any way in publication by the Department of Archaeology and Palaeoecology, is not held in electronic format. A site name is nearly always included on each data set. This name could be a local person’s name, for example Bathe House or Mr Dillon’s field, townland parish, farm or descriptive name (for example Midge’s Island because of the insects when the samples were collected). In most cases, a four or six figure
national grid reference is noted on the hard copy of each file.

(2) The university holds data on 11,000 individual tree samples. The hard copy of the data is usually on a single sheet.

(3) There are usually between 50 and 500 measurements of individual annual growth rings for each sample. There are over 600 sites from Ireland, about 50 from Scotland, about 230 from England and about 50 European sites. Most of the measurements are in electronic format on about 150 disks.

QUB advise that consideration was originally given to producing the requested information in a reliable meaningful format for disclosure. To secure an indication of how long this would take, staff within the department prepared data from one site containing about 30 samples. This exercise took approximately 5 hours to complete. QUB have calculated that if this was to be undertaken in relation to all relevant information held by the Department it would obviously exceed the appropriate limit provided by The Act (i.e. estimated at 1,833 hours, based on each individual sample taking 10 mins x 11,000 samples).

QUB also considered the provision of data in its current “raw” format as a way of bringing the costs of the request within the appropriate limit. However, QUB have explained that a member of staff would either have to photocopy the 11,000 samples or alternatively, would have to upload/copy the information contained within the 150 disks for electronic transmission or despatch. QUB deemed both exercises as clearly exceeding the appropriate limit.

In drawing their conclusion QUB noted that the cost of photocopying the 11,000 samples, at the recommended rate of 10p per sheet, would amount to some £1,100, over twice the overall statutory cost ceiling of £450. QUB further state that this cost is irrespective of the time required to physically locate and retrieve the hard copy folders in preparation for photocopying and the staff time required to oversee this exercise. In relation to reproducing the electronic disk versions of the “raw” data QUB estimated that this would amount to approximately 100 hours. This was based on a trial where one member of staff transferred the data from a number of disks onto a memory stick. Each disk transfer took approximately 40 minutes, which for 150 would equate to 6,000 minutes/100 hours.

QUB aver that not only would the cost of compliance exceed the appropriate limit but the effort in doing so would have comprised available resources and ongoing activities within the Department of Archaeology and Palaeoecology. I am informed that there is just one fulltime member of staff currently involved in supporting dendrochronology services at the University.

By way of assistance, the Ministry of Defence have provided guidance on the application of the Fees Regulations and it highlights the need to balance individuals’ rights of access to information against public authorities’ ability to
carry out their other duties. Equally The Commissioner in his guidance states that:

“where a reasonable estimate has been made that the appropriate limit would be exceeded, there is no requirement for a public authority to undertake work up to the limit”.

In considering the detailed response from QUB and on noting their supporting evidence I have reached a conclusion that QUB have appropriately and reasonably relied upon section 12 in refusing your requests of 10 April 2007 and 15 May 2008. The refusal notice was technically defective but it appears, from the face of the evidence, that your request was properly refused.

I have ensured that this letter has given you a detailed breakdown on QUB’s response and on my conclusions in this matter. I fully appreciate your position and note that you have waited a long time to have your request dealt with and therefore I have taken the unusual step of writing out my findings at this stage in lieu of you having to wait any longer on a Decision Notice.

You are entitled to a Decision Notice. However, I must advise you that my conclusions in the matter as mentioned in detail above would simply be mirrored if I were to draft a Decision Notice. I felt it was beneficial to you to explain in detail QUB’s response. Having fully considered the detail of their response and the most recent caselaw as promulgated by The Information Tribunal my view is that QUB were correct to apply section 12 and same will form the basis of the decision notice.

I wish to assure you that QUB’s breaches have been noted and will continue to be monitored. I have informed QUB of the ICO’s concerns regarding breaches and have also provided relevant guidance for future reference.

By way of assistance to you I have enclosed copy of the ICO’s guidance on “Using the Fees Regulations” which can be found on our website.

Please do not hesitate to contact me if you have any queries.

Yours sincerely

Nicola Bell
Senior Complaints Officer
The Information Commissioner's Office
Northern Ireland
02890 269384