

Freedom of Information

Volume 9, Issue 4

March / April 2013

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- Department to release information on free schools, p.16
- NHS regulator recommends extension of FOIA to private providers, p.17
- New policy on FOI veto power in formulation, p.20

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Long awaited guidance on vexatiousness arrives

The Upper Tribunal has given definitive new guidance on ‘vexatious’ and ‘manifestly unreasonable’ requests.

Until now, precise definitions of the terms — which are not defined in the Freedom of Information Act 2000 — have been difficult to establish. The Information Commissioner’s Office has issued guidance in the area, but First-Tier Tribunals vary in the extent to which they use that guidance. Further, there has been no binding authority from appellate courts or tribunals on their meaning.

Now, Judge Wikeley,

sitting in the Upper Tribunal, has filled the gap, as three separate but related judgments (*Dransfield, Craven and Ainslie*) were handed down.

While the judge noted that there was much to commend in the ICO guidance, he suggested it might need re-writing, so as to “place greater weight on the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious”.

The Judge proposed “four broad issues or themes” that public bodies should keep in mind when

considering whether FOI requests are vexatious or not:

- the burden of meeting the request;
- the motive of requesters;
- the value or serious purpose of requests; and
- any harassment or distress caused.

As to burden, the Judge said that questions of volume, breadth, pattern and duration of requests may be relevant. However, volume alone might

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Committee report on ICO suggests relaxation of rules on virement

The House of Commons Justice Committee has published a report on the functions, powers and resources of the Information Commissioner, proposing a lateral solution as to how to navigate the FOI budget cuts.

The report, which is informed by oral evidence sessions with the Information Commissioner and his two deputies, plus written evidence, is essential reading for

anyone interested in understanding the current role and future prospects of the Information Commissioner’s Office.

The report shows that the income for FOI work has been cut from £5.5 million in 2011-12 to £4.25 million in 2012-13, with the ICO planning for further cuts in 2013-14.

Despite these cuts, the ICO has increased the amount of FOI casework

completed, and reduced its backlog in this area. The Committee is impressed by the ICO’s success in this regard, while warning that further budget cuts would risk adversely affecting performance.

Commenting on the recognition for his Office in the report, the Information Commissioner said “the picture that

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