

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 December 2009

Public Authority: University of Leeds
Address: Leeds
LS2 9JT

Summary

The complainant made a request to the University of Leeds (the "University") for information relating to the funding, monies and grants provided to the University's Department of Psychology. The University refused to provide the requested information upon reliance of the provision contained at section 12 of the Freedom of Information Act 2000 (the "Act") and the exemptions contained at section 21 and section 40(2) of the Act. The Commissioner considers that section 12 was correctly engaged in this case as it would exceed the £450 cost limit to comply with the request. The University is not therefore obliged to comply with the request. The Commissioner has not therefore gone on to consider the exemptions contained at section 21 or section 40(2) any further.

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.

The Request

2. The complainant made a request on 14 January 2008 for the provision of the following information:-

"Under the Freedom of Information Act please provide with respect to the Institute of Psychological Sciences and its employed, lately known as Department of Psychology, University of Leeds, the funding/monies/grants provided and what's expected in return for this.

Specifically:

Please identify who is receiving money, where it is coming from (e.g. it may be given indirectly through associates), who is the named funder, the reasons for giving the money, the expected outcomes and what's required by the financier for supplying the money. The reasons, expected outcomes and what's required for the money/funds/grants received..."

3. The University responded to the complainant's request for information on 14 February 2008. The University disclosed two financial statements prepared by the Institute and provided a brief explanation as to what information those statements contained. This answered some but not all of the request.
4. The University stated that the complainant had specifically requested a considerable amount of detailed information. It explained that some of this was exempt under section 21 of the Act which exempts information which is accessible by other means (it gave the example of the basis, principles and financial safeguards for funding allocation by the Higher Education Funding Council for England (HEFCE) see www.hefce.ac.uk).
5. Furthermore the University explained that much of the information he had requested related to 'who is receiving the money'. It stated that this information was exempt from disclosure under section 40 of the Act which relates to personal data. It explained that this exemption was applicable because elements of the funding are expended on individual staff salaries.
6. The University also stated that the scale of the request was such that whilst it would hold considerable amounts of information relevant to the scope of the request it would exceed the appropriate cost limit of £450 to proceed any further with the request. It explained that this represented the estimated cost of one person spending 18 hours in determining whether the department holds the information and locating, retrieving and extracting the information. As the University asserted that the appropriate limit would be exceeded it confirmed that it was not therefore obliged to comply with the request under section 12 of the Act.
7. As the complainant was dissatisfied with the response he had received, on 8 April 2008 he wrote to the University and asked it to conduct an internal review of its decision.
8. On 10 June 2008 the University wrote to the complainant with the result of the internal review it had carried out. The University upheld its application of the costs exception contained at section 12 of the Act and confirmed that it would exceed the £450 cost limit to comply with the request. It concluded that as the cost limit would be exceeded in

this case it was not obliged to comply with the request, it did not therefore go on to review its earlier application of the exemptions contained at sections 21 and 40 of the Act.

The Investigation

Scope of the case

9. On 18 August 2008 the complainant made a complaint to the ICO as he was dissatisfied with the response he had received from the University in relation to his request.
10. The Commissioner's investigation has considered whether or not the University dealt with the complainant's request for information in accordance with all of its obligations under the Act.

Chronology

11. In order to investigate this complaint the Commissioner wrote to the public authority on 21 May 2009 and then subsequently on 2 July 2009. The Commissioner asked the public authority to provide its submissions in relation to its application of section 12. On 16 July 2009 the public authority wrote to the Commissioner providing its submissions in relation to its application of section 12.
12. On 23 September 2009 and then subsequently on 16 October 2009 the Commissioner wrote again to the public authority to ask for further submissions in relation to its application of section 12. On 17 November 2009 the University provided the Commissioner with its further submissions in relation to its application of section 12. These submissions are detailed in the analysis section below.

Analysis

Procedural matters

Section 12(1)

13. Section 12(1) of the Act states that:

"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."

14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £450 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit set out above. If an authority estimates that complying with a request may cost more than the cost limit, it can 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.
15. To determine whether the University applied section 12 of the Act correctly the Commissioner has considered the submissions provided by the University on 16 July 2009 and 17 November 2009.
16. On 16 July 2009 the University explained that the complainant's request covered the entire funding arrangements and therefore the full financial records of the Institute of Psychology. It explained that the request included specific requirements as to the collation of the information including analyses to a level and of types which could not be undertaken within the University's electronic financial accounting system because significant amounts of the information concerned are only held in a paper based filing system. It clarified that the volume of information concerned ran to the equivalent of numerous filing cabinets.
17. It explained that the Institute derives its funding from numerous sources and a proportion of that is received by the University from HEFCE for training and research grants and contracts. It stated that the scale of work that would be required to locate, retrieve and analyse this particular funding provision alone would be significant. It explained that it has published a list of the 195 research grants the Institute had obtained since 2001. It explained that each of the 195 grants had been awarded by a specific provider and for a specific purpose. It clarified that detailed funding on the agreed purposes for the grant is held in the original grant application, which normally includes substantial amounts of information and estimates as to the way in which the funds requested will be expended. It explained that estimates will cover the individual staff salaries to be paid for by the research grant and often names of staff are included, proposed conference attendees, costs of studentships amongst other things. It stated that the majority of this information is held in hard copy only with some, particularly from the earlier grants awarded, being held by the individual researchers. It explained that more recently the Research Councils have moved to secure electronic systems for their holding of this information and the

University systems are beginning to reflect this move to store this information electronically alongside the manual filing system for some grant providers. It explained that basic grant information is also supplemented by agreements for variance and annual progress reports amongst other things.

18. It suggested that recent experience of dealing with similar smaller scale enquiries has demonstrated that locating, retrieving and extracting information in respect of 2 to 3 research grants can take over three working days. It therefore concluded that the task of locating and retrieving all the information on such a large volume of research grants alone would in itself exceed the 18 hour time limit.
19. It explained that in respect of income for teaching, this is principally derived from the HEFCE allocation and its website contains substantial amounts of information as to the nature, purposes and methodologies of its funding to universities. The complainant was therefore directed to the HEFCE's website.
20. The University explained that it did however provide the complainant with two specially prepared extracts from the Institute's financial accounts which were intended to cover as many of the different elements of the request as possible within the 18 hour time limit.
21. On 17 November 2009 the University provided the Commissioner with further submissions in relation to its application of section 12. The University explained that it would just look solely at grant income in order to provide an estimate of the time and cost implications of complying with the request. However the Commissioner is aware that this is not the only funding which would be covered by the request. The University explained that the elements of the request for funding included a breakdown for who was receiving the money, where it was coming from, who was the named funder, the reasons for giving the money, the expected outcomes and what was required by the financier for supplying the money.
22. The University noted that some elements of this information are already published under the staff profiles on the Institute's website including, to some extent the reasons why the research was being undertaken. This however would not contain the entirety of the information requested.
23. It explained that in order to determine what is held relating to the detailed information on grants for example for the years 2005-06, 2006-07 and 2007-08, it first needed to establish the identity of the grants concerned. For the larger research grants, it stated that it should be possible from the expenditure database held in the Research Support Unit (RSU) to identify the more major grants listed for Psychology on the basis of the records held on expenditure. It clarified that this electronic database can be interrogated to provide lists of the grants

active during a particular session through the evidence of expenditure. It explained that this database would only provide limited information of relevance to the enquiry, for example, the name of the funder, the type of award, department, short title, the identity of the principal grant holder, the agreed start and end date of the grant. It confirmed that this electronic database would not however contain the bulk of the information requested, including the reasons, expected outcomes and requirements associated with the grants. It summarised that programming the electronic database to produce a full list of the grants specific to Psychology is a straightforward operation and estimated that such a report could be produced in around 1 hour. It did however advise that this report would not however identify grants held by other Schools where members of staff in psychology are listed as co-investigators and for which Psychology may be in receipt of funding. Producing a report of this information would take another 1 hours work. It would therefore take a total of 2 hours work to determine what grant information was held for the years 2005-06, 2006-07 and 2007-08.

24. Once the University had established what grant information was held for the period described above it explained that it would then need to locate the relevant files for each grant held by the RSU. It explained that the oldest of which will be archived, the more recent but completed grants will be held centrally whilst those still active will be held in the relevant faculty based branch of the Research Support Unit. Each file will need to be inspected to determine if it contains all of the information requested. The University explained that the RSU archive is located over 2 sites on the campus. It explained that files for any grants which have ended recently will be in the faculty's own archives, the files for any live grants will be either in 1 of 9 Faculty Research Offices or if they were funded by the EU/EC they could be at the central RSU within the EU Office. It clarified that this gave a total of 21 possible locations for files before it even considered the possibility of Institutes and individual researchers. It estimated that to locate all of the information would take at least 6 hours however it could be considerably more.
25. For the smaller consultancy type grants, the University explained that it should be possible for the more recent years to obtain a list of such grants from the consultancy records held centrally by the University. However for 2005-06 and 2006-07 it explained that it is more likely that the detailed information will be held by the Institute of Psychology or by the member of staff contracted to undertake the consultancy. It explained that the relevant files will then need to be located and as with the larger grants they may have been archived, held centrally, held by the faculty or by the Institute and/or its staff depending upon how long ago the consultancy took place. It estimated that this would take a further 4 hours work.
26. The University explained that once all the paper based information had been located its retrieval should be straightforward, but bearing in mind

the number of files involved and the various locations it would take up a significant number of staff hours. It estimated that for the years 2005-06, 2006-07 and 2007-08 there would be at least 60 grants. This was calculated from the fact that there were 195 grants from 2001. It explained that retrieval would take on average 5 minutes per grant which would amount to a further 5 hours work.

27. Finally the University explained that it would then have to extract the particular information requested by the complainant from its paper records. It suggested that this would take around another 15 hours. This is because there is a substantial amount of information which would have to be sifted through in order to identify the particular elements of the complainant's request. This would total 32 hours work to determine what is held, locate, retrieve and extract information relating to grants alone. However this is not the only type of funding relevant to the request and therefore this would not in itself satisfy the request fully.
28. The Commissioner considers that due to the significant number of grants relating to the years 2005-06, 2006-07 and 2007-08, the various locations in which these grants are stored and the fact that each would have to be sifted through in order to obtain all of the detailed information requested by the complainant, it would exceed the £450 cost limit at a charge of £25 per hour in order to comply with the request. This is because the University has estimated that it would take around 32 hours in order to determine what is held, locate, retrieve and extract information relating to grants obtained by the Institute of Psychology going back to 2005. However as grants are not the only form of funding which would come within the scope of the request and as the scope of the original request did not limit the request to information going back only to 2005, the Commissioner is satisfied that it would exceed the cost limit substantially in order to comply fully with the request.
29. The Commissioner notes that in this case the complainant did make more than one request within a single item of correspondence. Section 12(4) provides that, in certain circumstances set out in the Regulations, requests can be aggregated so that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information. In this case the Commissioner is satisfied that the requests relate to funding information within a particular department at the University. The Commissioner considers therefore that the requests were for the same or similar information and therefore can be aggregated.

30. As the Commissioner considers that section 12 was correctly applied in this case he has not gone on to consider the University's application of section 21 and section 40 any further.

Section 16(1)

31. Section 16(1) of the Act requires a public authority to provide reasonable advice and assistance to persons who make a request. Section 16(2) outlines that any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45, is to be taken to comply with the duty imposed by section 16(1).
32. The code of practice outlines that where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied within the cost limit.
33. The University has explained that it provided the complainant with advice and assistance in relation to previous requests made which led to the complainant making the request which is the subject of this Notice. However it does not appear that the University provided the complainant with adequate advice and assistance as to how he may be able to refine this particular request in order for it to be dealt with within the cost limit. However the Commissioner notes that as detailed at paragraph 20, although the University did try to provide some information within the costs limit, this does not satisfy its obligations under section 16 of the Act.

The Decision

34. The Commissioner's decision is that the University correctly applied section 12 in this case as to comply with the request would exceed the £450 cost limit.
35. The Commissioner does however consider that the University breached section 16(1) of the Act as it failed to provide the complainant with appropriate advice and assistance.

Steps Required

36. The Commissioner requires the University to provide the complainant with advice and assistance as to what information it may be able to provide within the appropriate cost limit in accordance with its obligations under section 16(1) of the Act.
37. The University must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

38. 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.

Other Matters

39. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 42 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

40. 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 17th day of December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“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.”

Section 12(2) provides that –

“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.”

Section 12(3) provides that –

“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.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“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 estimated.

Duty to provide Advice and Assistance

Section 16(1) provides that -

“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”.