

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2018

Public Authority: The University of Bristol
Address: Senate House
Tyndall Avenue
Bristol
BS8 1TH

Decision (including any steps ordered)

1. The complainant has requested information about research projects funded by named organisations in the Department of Aerospace Engineering (AERO) at the University of Bristol (the university) from 1 January 2015 to the date of his request on 6 November 2017.
2. The Commissioner's decision is that the university is entitled to rely on section 12(1). However, she considers that the university has not complied with its obligations under section 16 of the FOIA to provide the complainant with reasonable advice and assistance. She also notes that the response to the request was provided outside the statutory 20 working day time limit and accordingly the university has breached section 10 of the FOIA.
3. The Commissioner requires the university to ensure compliance with the legislation and provide advice and assistance to enable the complainant to submit a refined request within the appropriate cost limit.
4. The university must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 November 2017, the complainant wrote to the university and requested information in the following terms:

"I should be grateful if you would provide me a list of all research projects funded by:

- The Ministry of Defence, including the Defence Science and Technology Laboratory (DSTL);
- BAE Systems plc;
- Thales Group;
- and / or Qinetiq Group plc

conducted at the University of Bristol in the following research groups over the period 1 January 2015 to the present day:

- Department of Aerospace Engineering.

For each project, please provide the project title, the total research budget for the programme, and project objectives."

6. The university responded on 28 February 2018, well beyond the statutory timeframe, and provided some details that were in the public domain concerning two research projects. It refused to provide all the requested information citing section 43(2) – commercial interests.
7. On 14 March 2018 the complainant requested an internal review. The university provided an internal review on 24 May 2018 in which it maintained its original position that section 43(2) applied but also stated that the request fell within section 12 – cost of compliance exceeds total limit. The reasons for applying section 12 were brief and generic.

Scope of the case

8. The complainant contacted the Commissioner on 13 June 2018 to complain about the way his request for information had been handled.
9. He argued that he had made the same request to 12 universities. Eight of these universities held information that he was provided with and two universities provided a partial response. The complainant believes that the University of Bristol operates within the same environment, that his request was limited and general in scope, and that the information could have been provided.
10. The Commissioner considers the scope of the case to be solely whether the university was correct to cite section 12 of the FOIA in response to the request. If that is the case, the Commissioner will also consider whether the university needs to take any steps to

comply with its duty at section 16(1) of the FOIA to provide advice and assistance.

Reasons for decision

Section 12

11. Section 12(1) of the FOIA states that:

'(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.'

12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of the university. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.¹

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf> – (paragraph 12)

The complainant's view

14. The complainant's view is that the requested information could be provided because he has limited his request to projects conducted in a single department over a limited time frame. He could only speculate about why the university was not able to provide the information within the fees limit because the public authority provided very little explanation. He argued that staff within AERO could have been emailed to identify the relevant projects and that this could have brought the request within the cost limits.

The university's view

15. The university identified 16 research projects that involved funding by the parties named in the request where the principal investigator was based in the named department. Basic details concerning two of these projects had been provided to the complainant already. The university took 80 minutes to produce a list of all 16 projects.
16. After the Commissioner contacted the university it decided to take further measures to itemise how the request exceeded the fees limit. In line with the Commissioner's advice on section 12, the university conducted a sampling exercise. It explained that there is no local repository containing details of these projects which meant that individual academics would need to be asked for the details.
17. The university took 80 minutes to locate information it needed to produce the list of projects. It then isolated one project in order to conduct a sampling exercise. It took 85 minutes to locate, retrieve and extract the information necessary to respond to the request. From this one sample it estimated that it would therefore take over 21 hours to provide the information for all 14 research projects (this included the time taken to locate information to compile the project list). It acknowledged that some projects would require less time but that others might take longer. If the university included projects where the principal investigator was based elsewhere (not in the Aerospace department) more time would be required.
18. The university explained some of the factors that contributed to the time scale as follows:
 - Information is held across multiple systems.
 - Old finance systems needing to be interrogated because there is a new finance system in place.
 - The systems which are in place are not set up to report in line with the request.
 - The research grants have been closed and archived.
 - Some contracts are held electronically and others in hard copy only.

- The contract may not reflect what was delivered and changes to objectives would need to be cross-checked.
19. Finally, the university stated that exemptions would almost certainly need to be applied to the individual research projects, if it had been possible to provide the information within the fees limit. The Commissioner makes the assumption that this point was added to emphasise that it was unlikely that the complainant would be provided with all the requested information.
 20. The university, after further questioning from the Commissioner, revised the estimate above and increased the time it would take to respond to the request. This new estimate is set out in more detail in the paragraphs below.

The Commissioner's view

21. The Commissioner accepts the university's view that section 12 applies, however she notes that it only sought clarification from the complainant after her investigation commenced.
22. Furthermore, the university's initial refusal did not consider section 12 which was only cited at the internal review. The university did not suggest how the complainant could refine his request so that it might fall within the fees limit. Subsequently, the university asked the complainant only one specific question about whether the research projects were confined to those that had started within the requested timeframe.
23. After the university sent the Commissioner its more detailed breakdown, the Commissioner asked how much time it had taken in the sampling exercise to provide the objectives alone. As no advice or assistance had been given to the complainant, she needed to better understand how the figure had been arrived at, as the research project titles had been ascertained by then. The Commissioner is of the view that funding amounts would need to be held for accounting purposes, and regardless of the finance system, it would be a limited exercise to extract them.
24. The university provided a more detailed breakdown in its second response to the Commissioner. Rather than solely identify how long the objectives for each project were estimated to take, the university altered its analysis. It explained that it had not previously included in its calculations the time it would take to provide all the requested information for the two projects it had already given the complainant basic details about and that its previous estimate would have to be revised upwards. It explained what tasks are

involved in locating and extracting any individual research project. The breakdown is as follows:

- i) Identify the project/grant.
- ii) Locate the contract (either paper file or scanned document lists).
- iii) Retrieve contract (from hard copy or digital storage).
- iv) Review contract for required information (e.g. value or objectives).
- v) Review contract for application of other exemptions (e.g. non-disclosure agreements, confidentiality clauses etc).
- vi) Check objectives or value against what was actually delivered/spent (as they can differ).

Although the university has identified the tasks involved, they would not all be eligible to include in the fee calculation.

25. The university estimated that extracting the value of the research grant alone would take 55 minutes per project which would total 16 hours. The university included in this figure extra time for producing a list of these figures. Extracting the objectives would take 70 minutes per research project. The university again included some extra time to produce a list of these objectives in order to arrive at 20 hours. This ends in a final overall total of 36 hours. Excluding the extra time factored in by the university would still leave a total of more than 33 hours, well in excess of the 18 hour fee limit.
26. The university then repeated the fact that it had not included AERO projects where the principal investigator was based in another department. Were it to do so, a figure in excess of 100 hours for each category of information would be likely.
27. Finally, the university suggested that its interpretation of the request should have been extended to include studentships - funding from the named third parties for post-graduate research students in AERO. The university explained that there were at least six such projects. Including these would clearly increase the amount of time required.
28. The university has provided different sets of calculations to the Commissioner, its final calculation increasing the time it would take to provide a full response to double the fees limit. Whilst the Commissioner considers this figure to be in excess of the likely figure, the university is not obliged to provide a precise calculation under the section 12 requirements.
29. The estimate given by the university to provide the objectives alone, indicates that it would exceed 18 hours. Therefore the

Commissioner accepts that responding to the request would exceed the fees limit. If one part of a request exceeds the limit the public authority is not obliged to respond to any part of the request.

30. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, it –

"...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-focussing their request, information may be able to be supplied for a lower, or no, fee."

Section 16 – duty to provide advice and assistance

31. Section 16 of the FOIA states:

"(1) 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.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

32. It is clear from the correspondence on file that the university did not make any attempt to clarify the request with the complainant prior to the complaint being brought to the Commissioner. Consequently, it was unable to provide any advice or assistance that may have enabled the complainant to make a new request that would, potentially, not be in excess of the appropriate limit.
33. As the university failed to provide advice and assistance it has breached section 16 of the FOIA. Therefore the university is now required to provide the complainant with advice and assistance as to what information could be provided within the appropriate limit.

Section 10 – time for compliance with request

34. Section 10(1) of the FOIA states that:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

35. The Commissioner finds that the university breached the requirement of the Act, that an information request should be responded to within twenty working days of receipt. Additionally there was a delay in completing the internal review which went beyond the maximum 40 working days that the Commissioner considers acceptable.

Other matters

36. The complainant asked the Commissioner to investigate whether the internal review was conducted by someone independent from the original refusal. Whilst reaching no conclusions in this case, she would remind any public authority that, "It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision."
37. The Commissioner recommends that the university reviews its processes in line with her guidance², along with the recently updated Section 45 Code of Practice³ regarding the handling of information requests. This should help the university avoid breaches of the FOIA described above.

² <https://ico.org.uk/media/1624144/section-45-code-of-practice-request-handling-foia.pdf>

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

38. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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