

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2019

Public Authority: University Council

Address: University of Hull
Hull, HU6 7RX

Decision (including any steps ordered)

1. The complainant has requested information relating to racism, including complaints of racial harassment and discrimination.
2. The Commissioner's decision is that the University of Hull (the university) was entitled to rely on section 12 of the FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 3 May 2018, the complainant wrote to university and requested information in the following terms:

"..please provide me with the following information regarding racism – including racial harassment and discrimination, and institutional racism – at your university or college.

N.B. The six years I would like data for are the following academic years:

2012-13
2013-14
2014-15
2015-16
2016-17
2017-18

QUESTIONS:

Training

1. Do you provide training for staff on dealing with racism, both in regards to racial discrimination and racial harassment?

1.1 Does this training cover institutional racism?

1.1b Does it cover implicit bias?

1.2 Is the training provided part of the general equalities and diversity training or dedicated training?

2. Is the training mandatory for all staff, i.e. academic and other staff?

3. Do you provide training for students on dealing with racism, both in regards to racial discrimination and racial harassment?

3.1 Is the training mandatory for all students?

Support & advice

3. Who at the university or college provides a first point of contact for students affected by racism? Please specify their job titles and whether they are students or staff.

4. How many people work in these roles?

5. How many of these people are BAME (black, Asian and minority ethnic)?

5. What training or qualifications are these people obliged to have beyond any general training on equalities and diversity sexual available to other/all university or college staff?

6. How many student services' advisors have undergone specific training to deal with racism? Does this cover institutional racism?

Student investigations

7. Is it mandatory for university or college staff who investigate a student complaints of racism to have specific training on handling such investigations, e.g. dedicated training on what constitutes racism, implicit bias and institutional racism?

8. Are staff investigators allowed to investigate complaints of racism involving colleagues from their department?

9. If so, how often has this happened?

10. What procedures are in place to prevent such conflicts of interests in these investigations?

11. Is it mandatory for college staff who sit on complaints panels and in appeal hearings that deal with a complaint of racism to have undergone specific training on this issue?

12. On how many occasions have complaints about racism been investigated by an all white (non-BAME) team?

13. How many investigating officers – or whatever you call the people who investigate student complaints – are BAME?

Human resources

14. Is it mandatory for HR staff investigating an allegation of racism to have specific training in this field?

15. What proportion of and how many HR staff are BAME?

Staff-on-staff harassment

18. Who or which department takes the lead role in investigations into staff-on-staff racism?

19. Is it mandatory for university or college staff who investigate staff complaints of racism to have specific training on handling such investigations, e.g. dedicated training on what constitutes racism, implicit bias and institutional racism?

Policy

Does the university have a dedicated policy on institutional racism? If not, is there a policy that covers institutional racism – and what is its name?"

5. The university responded on 4 June 2018 and refused to provide the requested information citing section 12 of the FOIA, specifically with reference to part 9 of the request "*If so, how often has this happened?*" However, it advised that it could provide the remaining information within the cost limit, and suggested that the complainant revise his request accordingly.
6. Following an internal review the university wrote to the complainant on 10 July 2018 and upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 31 July 2018 to complain about the way his request for information had been handled.
8. The complainant provided a copy of a previous FOIA response from the university to one of his colleagues, also relating to complaints about racism.
9. The Commissioner acknowledges the complainant's frustration that in that response the university provided numbers of complaints. However, no formal complaint was made to the Commissioner regarding that request and therefore she has not had sight of all the relevant information. Furthermore, from the information provided to her, it appears that the request was not as wide ranging and only partially mirrors the request that is the subject of this decision notice.
10. The complainant further stated:

"In its initial response to my request on 4 June 2018, the university claimed a section 12 exemption, claiming that it would need to examine 425 case files.

I therefore asked the university to conduct an internal review, as I believed that its response was inaccurate and misleading. It did not have to review hundreds of cases but only eight, plus any other complaints received in the few months after the previous request. (Based on the data provided to my colleague, I would estimate that the university might need to review a further two cases at most.)

I maintain my position that the university should only need to check eight case files. If they have destroyed the information previously compiled for FOI 1399 then this needs to be investigated.

I further note here, that Hull has repeatedly been resistant to providing responses to FOI requests. (I have attached an example of this.)"

11. The example provided relates to a previous request made by the complainant where the university stated that it would be able to provide some of the information if the complainant was prepared to refine his request. This in itself, does not indicate 'repeated resistance' to providing responses.

Reasons for decision

Section 12 – cost of compliance

12. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the university.
14. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the university.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
16. The university confirmed it holds the information that has been requested. It advised that it is contained within 425 casework files. Whilst the files can be located relatively quickly it is the analysis of the data within the files that will take time, in order to answer question 9 each file will need to be reviewed, read and the data extracted. The university considered that given the level of information in a file, the time of 5 minutes per file was potentially on the low side.
17. In correspondence to the Commissioner the complainant referred to a previous request made by one of his colleagues for similar information and that response had identified eight files. The complainant was therefore of the view that the university would only need to check these eight files rather than the 425 files claimed.
18. The Commissioner sought further clarification from the university relating to this matter. The university explained that the previous

information had been established by a relatively new member of HR staff who went through the files manually (taking beyond the 18 hours) to provide the information.

19. When this request was received there were more files and as it was possible that there had been further incidents, they would all need to be reviewed. Given the time it had taken to locate and extract the information for the previous response the relevant staff asked if they had to go through more files. They were advised that if it was going to take longer than 18 hours it wouldn't be necessary but they should provide the rationale as to why.
20. The university confirmed that no sampling exercise had been undertaken. The calculation had been provided by HR who are responsible for the files and was based on the time taken for the previous request. The university therefore maintained that it had not estimated the time it would take, but rather, had a firm indication of the time it would take. It further advised that it does not have the data stored electronically and the files that have to be searched are hard copy files.
21. Clearly, given the number of files to be reviewed, it would take more than 18 hours to locate and extract the information. Therefore the Commissioner finds that the university was entitled to refuse the request.

Right of appeal

22. 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

23. 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.
24. 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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