

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2022

Public Authority: The British Library
Address: 96 Euston Road
London
NW1 2DB

Decision (including any steps ordered)

1. The complainant has requested information relating to ten named authors and their loan totals over three separate time periods from The British Library ("the Library").
2. The Commissioner's decision is that the Library has correctly applied section 12(1) of FOIA to the complainant's request, and that it has complied with its obligations under section 16(1) of FOIA to provide adequate advice and assistance to the complainant.
3. The Commissioner does not require the Library to take any steps.

Request and response

4. On 12 August 2021, the complainant wrote to the Library and requested information in the following terms:

"1. For each of the ten authors listed below can you state their total number of their library loans (including hardbacks, paperbacks, audio books and large print books) for the period July 1990 to June 1991:

John le Carre

Barbara Cartland

Agatha Christie

Catherine Cookson

Dick Francis

Jack Higgins

George Macdonald Fraser

Ruth Rendell

Wilbur Smith

Danielle Steel

2. For each of the above-named authors can you identify their top three most borrowed titles during the period July 1990 to June 1991. In the case of each of these three books can you state the total number of books borrowed.

3. For each of the above-named authors can you state their total number of library loans in both the years 2000 and 2010.

4. In the case of each of the above-named authors can you state the total number of library loans for both 2020 and 2021. In the case of each of the above-named authors can you identify their three most popular titles in 2020. In the case of each book can you state the total number of loans. If figures are not available for 2020 and 2021, can you provide the most recent figures you have."

5. On 10 September 2021, the Library provided a response, in which it stated that it does not hold the Public Lending Right ("PLR") information for pre 2006 and that it refused to provide the PLR information for 2006-2010, applying Section 12(1) of FOIA. The Library did provide the top three titles for the ten authors for the period 2018/19.
6. The complainant sought an internal review of the Library's decision on 11 September 2021.
7. Following an internal review the Library wrote to the complainant on 11 October 2021 and revised its position, stating it had been incorrect that it did not hold the information for pre-2006, but that, like the data for 2006-2010 it was held in raw data form, and applied section 12(1) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 28 October 2021 to complain about the way their request for information had been handled.
9. The Commissioner has considered the Library's handling of the complainant's request, in particular its application of section 12(1) of FOIA. He has also considered whether the Library complied with its obligations under section 16(1) of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. 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.
11. 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 local government public authorities such as the Library.
12. 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 Library.

13. 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.
14. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency*¹, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence." The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the complainant.

The Complainant's position

17. The complainant expressed disappointment with the Library's initial response, stating that it was "incorrect and misleading."
18. In response to receiving the Commissioner's preliminary view that the Library had correctly cited section 12(1), the complainant stated:

"I maintain that the Library routinely collates this type of information and so could have disclosed it within the time and costs limits."

¹ EA/20017/00041

19. Furthermore in their internal review request, the complainant believed that in response to question four, of their request, the Library could have provided more up to date figures than 2018/19.

The Library's position

20. The Commissioner asked the Library to provide a detailed explanation of its estimate of the time and cost of responding to the request.
21. In its submissions to the Commissioner, the Library maintained its reliance on section 12(1) of FOIA and offered an explanation for how it calculated that the request exceeded the appropriate limit.
22. The Library explained that it had already established it holds the information but that it is in the form of a sample data set and algorithm for each year and not in the form of the grossed-up loan statistics for each year, as requested. It further explained that the information was located and/or retrieved in the form of archival hardcopy data for the years prior to 2006 and raw sample data in digital form for the years 2007 onwards.
23. The Library went on to explain to the Commissioner:
- “...the estimated time and costs apply solely to the extraction of the requested statistics from the sample data set, either in hardcopy computer printout form (102 hours) or via analysis of digital datasets where such still exist (35 hours).
24. When describing, to the Commissioner, the type of work that would need to be undertaken, to provide the information falling within scope of the request, the Library explained that the sample data set for each year contains the records of every book loan made during the year by each of the 1,000 or so public libraries in that year's sample set, which results in “several million data points.” The Library then broke this down into the following tasks:
- “•Set up a new loans year in the PLR system (e.g. configure the annual dataset and algorithm parameters) – 8 person-hours
 - Check and load data files from each library/library authority in the sample set – 67 person-hours
 - Run grossing up calculation and resolve errors – 5 person-hours
 - Craft and run database searches/reports for specified statistics, authors, and books – 22 person-hours.

102 person hours x £25 per hour = £2,550 for each year of pre-2006 data.

Where the sample data for a year is already mounted in the PLR system the second step is not required, but the remaining steps remain necessary in order to recalculate and interrogate specific statistics:

= 35 person hours x £25 per hour = £875 for each year of post-2006 data."

25. Furthermore, the Library explained that the above estimated time does not include an estimate of how long it would take to digitise the sample sets that are in hard copy into a format suitable for "ingest into the system" and that this activity "would in its own right take substantially longer than the estimated 102 hours."
26. In its initial response, to the complainant, the Library mistakenly confirmed that it did not hold the PLR information for pre-2006. However this was corrected in its internal review where the Library informed the complainant that the requested information was held, but that, like the information for question three, the Library was withholding it, based on the cost limit exemption.
27. When responding to question four of the request, in its initial response, the Library provided the complainant with the most recent statistics readily available which was for 2018/2019 but it obscured the exact calculated loan totals for each author into bands of 100,000. The Library explained that this was the policy of the Registrar of Public Lending Right, before the PLR function passed to the Library and that this was in order to conceal the specific earnings of individual authors and protect their personal data.
28. However, as part of their review, the Library reconsidered this policy and provided the exact loan rate for higher profile authors, for "the maximum sum that they may receive, from the PLR, is already known due to the published cap figure, the sum involved is likely to be less significant to their private financial affairs." The Library did maintain that where loan totals are below 99,999 per year, it would withhold the specific data to protect the personal data and financial affairs of less well-known authors.

29. In further relation to question four, the Library initially stated that the information was not held, however in its internal review response it discovered that the statistics for 2020/2021 had, at the time of the request, not been calculated and as they were due for publication in February 2022, nevertheless the sample data set and algorithm did exist within the PLR system. However, it was explained to the complainant that the statistics for 2019/2020 were not run due to Covid disruption and that the cost of extracting the statistics for 2020/2021, from the hardcopy sample data would take approximately 36 person-hours work and therefore exceed the cost limit.

Sampling exercise

30. The Library confirmed that since 2013, they have run the PLR statistics annually for the purpose of calculating PLR payments. The Library collects loan data from 30 regional library authorities, resulting in data being gathered from approximately 1,000 individual public library branches. A grossing up calculation is then applied to this sample data in order to provide an estimated calculation of the national number of loans for each registered work for that year. As such, the figures they provided are based on the actual time taken to run the relevant process each year and are well understood. Therefore "no random sampling had been undertaken."

The Commissioner's conclusion

31. The Commissioner considers the Library's estimate of 102 hours to locate, retrieve and extract the requested information to be reasonable.
32. The Library has estimated that, for pre-2006 data alone, it would take 67 hours to check and load the data files from each of the 1,000 or so public libraries. Even if the Library was to check and load the data in half of this time, the cost of complying with the request would still be in excess of the cost limit.
33. The Commissioner's decision is that Library estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Library was correct to apply section 12(1) of FOIA to the request.
34. The Commissioner also notes the concerns raised by the complainant on the Library's reliance on section 40 of FOIA to withhold some information in the scope of question four. As the Commissioner has determined section 12(1) of FOIA is engaged to the entire request, he has not gone on to investigate section 40(2) for this part of the request.

Section 16(1)-duty to provide advice and assistance

35. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to the good practice contained within section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1).
36. Where a public authority refuses a request under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
37. In its submissions to the Commissioner, the Library explained that an entire year must be calculated at once in order to generate the requested statistics and that as such there is no way the complainant's request could be refined to bring it in-line with the appropriate costs limit.
38. In response to question four, the Library did provide the complainant with the most recent set of readily available statistics which was 2018/2019. The Commissioner notes that it may have been helpful for the Library to have explained to the complainant that this is how it was able to accurately determine the request exceeded the costs limit.
39. The Commissioner considers that the advice and assistance the library offered the complainant was adequate. He is therefore satisfied that the Library has met its obligations under section 16(1) of FOIA.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

40. 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@justice.gov.uk

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

41. 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.
42. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF