

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2015

Public Authority: University of Cambridge

Address: The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested from the University of Cambridge (the "University") information relating to equality and diversity. Specifically, for the proposals completed by academics and staff at the University in relation to the EPSRC Doctoral Training Call.
2. The University refused parts of the request and relied on section 12(1) of the FOIA on the basis that responding would exceed the appropriate cost limit.
3. The Commissioner's decision is that the University has correctly relied on section 12(1) of the FOIA to the request. He also considers that the University has provided appropriate advice and assistance under section 16 of the FOIA. Therefore the Commissioner does not require any steps to be taken.

Request and response

4. On 12 June 2014, the complainant wrote to the University and requested information in the following terms:

"I write to make an information request under the Freedom of Information Act (2000), related to equality and diversity. Specifically, I am interested in proposals completed by academics and staff in your University in relation to the EPSRC Doctoral Training Call. In the second round, a subset of outline proposals were identified as being taken forwards for a full proposal (as listed here:

<http://www.epsrc.ac.uk/newsevents/news/2013/Pages/cdtoutlinecallsresulsts.aspx>)

In relation to each proposal in that list, I should be grateful if you could provide:

1. The section(s) of the proposal which were directed at Equality and Diversity, noting EPSRC's detailed instructions which required this to be explicitly considered.

2. Any drafts of the section(s) noted in 1.

3. Any email correspondence in relation to these section(s), including any advice provided by the University explicitly in respect of this proposal.

4. Any correspondence with EPSRC in furtherance of this matter (equality and diversity) in relation to this specific call, or otherwise relied upon for writing the proposal.

Please note that you may, if it is easier or more efficient for you to do so, provide the proposal and its drafts in totality.

I should be grateful if you could fulfil this request within the 20 day time limit, as described under the Act. If you have any queries, or would like to seek further clarification, please do not hesitate to contact me."

5. The University responded on 10 July 2014. It explained that to comply with parts 2 – 4 of the request would exceed the appropriate cost limit. It therefore cited section 12(1) of the FOIA.
6. In relation to part 1 of the request, the University stated that the information to answer this could be provided within the appropriate cost limit. However, under section 16 of the FOIA the University advised the complainant to submit a new FOIA request if he wished the University to supply this information.
7. The complainant expressed his dissatisfaction to the University about its response to his request for information and its application of section 12(1) of the FOIA to parts 2 – 4. He requested a review of its response.
8. Following an internal review the University wrote to the complainant on 6 August 2014. It upheld its original position to refuse the request under

section 12(1) of the FOIA to parts 2 – 4. To part 1 of the request, the University provided advice and assistance under section 16 of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 6 August 2014 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if the University correctly applied section 12(1) of the FOIA to parts 2 – 4 of the request for information. He will also consider whether the University had taken reasonable steps to provide advice and assistance in accordance with section 16(1) of the FOIA to part 1 of the request.

Reasons for decision

Section 12 – the cost of compliance

11. Section 12(1) of FOIA allows a public authority to refuse to comply with a request for information if the estimated cost of doing so exceeds the appropriate cost limit. With respect to the University this limit is £450, representing 18 hours work at a charge of £25 per hour. The only activities that a public authority can take into account are set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Fees Regulations') and are the following:
 - 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.
12. To determine whether the University applied section 12 of the FOIA correctly to the request, the Commissioner has considered the responses provided by the University and the complainant.

The University's position

13. The University had stated to the complainant that it has 13 proposals listed in the EPSRC document. The emails relating to the documentation are likely to have been sent between numerous individual researchers

and administrative staff for each proposal. It confirmed that these are not collated centrally.

14. The University explained that to determine whether or not all the requested information is held and to subsequently collate, retrieve and extract it, would involve searching electronic, hard copy folders and emails. The Principal Investigators for each of the 13 listed proposals, various other members of staff and offices would have to check if they have retained any drafts or other correspondence which meets the complainant's information request.
15. The University further explained that the total number of individuals cannot be directly counted until such searches are concluded. Therefore, it is likely that more than 50 individuals would have been involved with the 13 proposals.
16. The University clarified that if an estimation of 30 minutes per person for 50 individuals was considered, this search exercise would take approximately 25 hours of staff time.
17. It estimated that the time required for the University to determine whether all of the information is held and then to locate, retrieve and extract it would exceed 18 hours of staff time charged at £25 per hour. Therefore, the University argued that the request exceeds the appropriate limit of £450 as set out in the FOIA.
18. In its submissions to the Commissioner, the University confirmed that it had carried out a sampling exercise based on records held by two of the thirteen relevant Principal Investigators. The University explained that these Principal Investigators were involved in the drafting and collation of the proposals and that was the reason why they conducted the searches.
19. The University stated that the drafting of the equality and diversity sections of the proposals was part of a "*larger process*". Therefore, locating any information meeting the complainant's description, would not just involve automated keyword searches of the email accounts and electronic files held by the various Principal Investigators.
20. The University clarified what would be required to determine whether the information was relevant to the complainant's request. In particular to parts 3 and 4 of the request which asks for different types of correspondence. It explained that this would involve a manual document-by-document analysis of the results.
21. The University stressed to the Commissioner that the complainant's information request for drafts of individual proposals and correspondence about the drafts, is not held or labelled in a systematic

or consistent way. Therefore, it would require a wide range of keyword searches and in order to carry out the searches, the University stated that it would involve "*many hours*" or days of work for this location and retrieval exercise.

22. Following further investigations by the Commissioner, the University supplied additional details about the sampling exercise conducted by two of its Principle Investigators in their search for the requested information.
23. The University said that the first Investigator had retained all of his emails for the period of the development of the proposal. It stated that approximately 900 emails are held between him and the two core colleagues who were involved in its drafting. The University explained that automated searches of these emails revealed 135 of them are relevant to the drafting process. It added that a further 135 of the emails although not relevant to the drafting process, could contain information requested by the complainant.
24. The University stated that the first Investigator holds approximately 600 emails between him and ten other staff members who were involved in the proposal development. It explained that focusing on the 270 emails with the two core colleagues it would need an average of 5 minutes per email to assess the contents to ascertain whether they contained any of the requested information. This process, the University stated, would take 22 hours.
25. The University explained that in addition to this, the Investigator holds an electronic folder which contains 159 documents from the period of the development of the proposal. It estimated that it would take 5 minutes per document which would take a further 13 hours. Therefore, the University has estimated that to find all of the information that it holds relating to the request (parts 2 – 4) would require 35 hours to conduct the searches.
26. The University said that the second Principal Investigator had deleted most of his emails from the period of the development of the proposal before the complainant's request was received. It stated that the automated searches of his active email folders revealed a small number of relevant emails. Also, that there had been email discussions of the topic of equality and diversity with regard to the proposal.
27. The University clarified its position regarding deleted emails and explained to the Commissioner that these are likely to be held on archived back-up tapes maintained by the University's information services department. It said that the exercise of searching these files involves restoring a user's account at a particular time before conducting

the searches. It stated that this would cause disruption including the risk of corrupting the investigator's active emails.

28. The University estimated that a minimum of 100 emails would be returned following the automated searches of the restored account. It estimated 5 minutes per email, approximately 8 hours.
29. The University said that the development of the proposal was carried out partly at meetings where informal handwritten notes were made by the Investigator and academic colleagues. It explained that the handwritten notes are held in day-to-day notebooks which would require searching on a page-by-page basis. It estimated that it would take at least 3 hours to search the notebooks from the relevant period to find the complainant's requested information.
30. The University noted to the Commissioner that the two Principle Investigators developed their proposals differently. However, the University maintained its reliance of section 12 of the FOIA in refusing the request. It reiterated that it would take the University in excess of 18 hours to determine whether all of the information requested by the complainant is held and then to locate, retrieve and extract it.
31. The University explained how even if searches were to be limited to the 13 Principal Investigators, these searches would not necessarily locate all of the information requested because some of it may be held only by other members of staff. They would also have to conduct automated searches of their emails in order to confirm that they did not hold any further information already retrieved by the 13 Principal Investigators.

The complainant's position

32. The complainant disagreed with the University's claim that it would need to perform individual keyword searches. He is of the view that an *"administrator could extract all the records of the Principal Investigators using one carefully designed search command from the email system."* He considers that any drafts could be obtained and he explained how this could be performed.
33. The complainant disputed the University's approach to its sampling exercise. In particular, its estimation of hours of staff time and the fact that *"academics"* made the estimation. He is of the view that they are not *"well informed"* to conduct this exercise and that it is not a *"reasonable approach to take."*
34. The complainant argued that there is no evidence to show that the sampling exercise was conducted and opposed the University's

estimates. He argued that the University did not give reasons for its estimate but only suggestions that in his view were vague. The complainant compared the University's estimate against other institutions and he claimed that the University's approximation is higher.

35. The complainant stated that he had submitted similar requests to other institutions and they had provided him with the information. The volume of information which was provided in the response of the institution with the largest amount of material resulted in a total of 36 pages. The complainant argued that this could not fall over the £450 cost limit unless there were particular challenges to the University in searching for the information.
36. He further argued that there was no confirmation as to whether or not the University holds the information he requested. The complainant considers that in respect of each claim, the University could perform some email searches to determine this issue.
37. The complainant considered steps to be taken to determine how to pursue his request and he offered this to the University. He also suggested to the University that to confirm whether or not the information exists, it would require "*a subset of the activities*" which the complainant had listed in his correspondence.
38. In summary the complainant argued the University's refusal of his request on the basis of estimates of costs and its citing of section 12(1) of the FOIA. The complainant considered the University's refusal letter to contain errors of fact and that it did not adhere to the ICO guidance to refusing a request.

The Commissioner's position

39. Whilst the Commissioner is sympathetic to the complainant's concerns, he has no evidence that the University's explanations for its estimates are inaccurate.
40. In regards to the complainant's view of the University's refusal letter, the Commissioner has not considered this as it is not the scope of the case.
41. The Commissioner has considered the explanations of the University regarding parts 2 – 4 of the request. He recognises that it would take in excess of 18 hours of staff time for the University to determine the amount of information held and then to locate, retrieve and extract that information.

42. The Commissioner accepts the University's estimation of 35 hours to search for all of the information falling within the scope of request 3 and 4, is a reasonable one.
43. Therefore, the Commissioner is satisfied that the University correctly applied section 12(1) of the FOIA to refuse to comply with part 2 – 4 of the request.

Section 16 – Advice and assistance

44. Where a public authority claims that section 12 is engaged, the Commissioner expects that it should, where reasonable, provide advice and assistance under section 16 of the FOIA to help the requestor to refine the request so that it can be dealt with under the appropriate limit.
45. The Commissioner notes that in the University's response to the complainant on 10 July 2014, it explained that it is likely that information to part 1 of the request could be provided within the appropriate limit of £450.
46. The Commissioner acknowledges that the University informed the complainant that he would need to submit a new request under the FOIA if he required the University to supply the information. However, the Commissioner recognises that the University continued to advise that if a new FOI request was submitted by the complainant, that not all the information would be provided as some of it may constitute exempt information under part II of the FOIA.
47. Having reviewed the evidence before him, the Commissioner is satisfied that the University had taken reasonable steps to provide advice and assistance in accordance with section 16(1) of the FOIA.

Right of appeal

48. 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

49. 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.
50. 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

Rachael Cragg
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