

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2015

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

Decision (including any steps ordered)

1. The complainant has requested information from the University of Bristol ("the University") relating to animal experiments.
2. The Commissioner's decision is that the University correctly applied section 12 of FOIA to the request.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 11 September 2014, the complainant wrote to the University and requested information in the following terms:

"Would you please let us have, under section 1(1)(a) of the Freedom of Information Act 2000, the following information pertaining to animal experiments under the Animals (Scientific Procedures) Act 1986 [ASPA] at your establishment: the number of animals used in scientific experiments in 2013, by (i) species, and (ii) purpose of research?"

5. The University responded on 2 October 2014 and confirmed that the information was held. However, it cited section 12 of FOIA as it considered that compliance with the request would exceed the appropriate cost limit.

6. The complainant returned to the University and asked for an internal review to be carried out. The complainant argued that the information requested should already be held by the establishment licence holder (ELH) on behalf of the University and there should therefore be no question of needing to collate it to respond to the request. The complainant stated the following:

"Section 12 FOIA can therefore have no relevance. A public authority cannot rely on section 12 when it, or a senior employee representing it, has a duty under a separate legislation already to have collated the information in question".

7. The University sent the outcome of its internal review on 1 December 2014. It maintained its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 28 January 2015 to complain about the way his request for information had been handled.
9. Specifically he argued that the University had incorrectly applied section 12 of FOIA to the request.
10. The Commissioner has therefore had to consider whether the University was correct to refuse to comply with the request on the grounds that it would exceed the appropriate cost limit set out in section 12 of FOIA.

Reasons for decision

11. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations.)
12. This limit is set in the fees regulations at £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, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
13. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

- a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
14. The four activities are sequential, covering the retrieval process of the information by the public authority.
 15. The University explained that to comply with the request, it would exceed the appropriate cost limit. It provided the Commissioner with the following submissions to support its application of section 12.
 16. The University would first need to contact each individual licence holder and ask them to manually retrieve the relevant information from their licences. The University confirmed that the licences may be held electronically or in hard copy. The University explained that ASPA license can cover numerous research studies and stretch to 100+ pages in some circumstances, so the work involved per licence "*is not insignificant*". The University confirmed that it currently has approximately 60 licence holders and this figure would have been higher in 2013, the time period the request is concerned with.
 17. The University explained that a sampling exercise has not been undertaken but it is estimated that an average time of 20-30 minutes per licence is reasonable. At this point, the Commissioner notes that a previous decision notice¹ upheld the University's position that an average time of 20-30 minutes is reasonable.
 18. The University calculated that it would take a minimum of 20 hours to locate, retrieve and extract the requested information (60 licences x 20mins).
 19. The University confirmed that the estimate is based upon the quickest method of gathering the information. It explained that as no central record is held, it would have to contact each licence holder individually and ask them to extract the relevant information.
 20. The Commissioner asked the University to confirm that the requested information had not been compiled at the time the request was received. The University confirmed that the requested information was not compiled at the time the request was received.

¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2012/769792/fs_50449254.pdf

21. The Commissioner also asked the University whether any consultations had taken place or discussions held regarding whether the requested information would be compiled in the near future.
22. In response, the University explained that due to a new piece of software that it is procuring, the requested information will be compiled and should be available during 2015. It further stated that it is likely that the University will proactively publish this information on its website once the system has been implemented. It advised the Commissioner that it had already informed the complainant of this.
23. To conclude, the Commissioner asked the University to detail its requirements under the ASPA. It explained that the information requested is held and would be provided to the Secretary of State or Home Office on request, as it is required to do under the ASPA. It explained that there is no provision in the ASPA that requires the University to have the records readily available at all times.

The complainant's arguments

24. The Commissioner has acknowledged all arguments raised by the complainant to dispute the University's application of section 12.
25. It is clear to the Commissioner that the complainant strongly disagrees with the University's application of section 12. The complainant believes that the University misunderstands the requirements of ASPA and their impact on the section 12 exemption.
26. The complainant argued that the obligation on the ELH under ASPA is to hold information about the number and species of animals used in procedures and this is an ongoing duty. He further argued:

"It is not an obligation simply to collate and provide the information if the Secretary of State asks for it. The ELH must hold the information irrespective of whether the Secretary of State asks for it. If the ELH does not already hold the information, he is in breach of his statutory duty under ASPA".

27. The complainant explained that the University does not dissent from the proposition he raised in his internal review request. That is, that a public authority cannot rely on section 12 when it is in breach of a duty, under separate legislation, to have already collated the information in question. The complainant also explained that a different University had accepted this argument by providing the requested information after it initially relied on section 12.
28. The complainant referred the Commissioner to his internal review request in which he stated:

"This accords with common sense. It would be extraordinary if a public authority such as the University did not know the number and purpose of animal experiments conducted on its premises. Apart from anything else, how can the ELH comply with his duty, under both ASPA and the transitional provisions, to ensure that there are sufficient trained staff and suitable installations and equipment if he does not know the number and species of animals or the purpose for which they are used?"

29. The complainant also directed the Commissioner to an argument raised by the University in its internal review response. In its response the University directed the complainant to a previous decision notice² that had upheld its position following a similar request for information. The complainant argued that the previous decision notice was irrelevant. He explained that the arguments he had advanced in this case were not raised by the complainant in that case. The complainant advised the Commissioner that the previous decision notice, was concerned with the version of ASPA that was in force at that time. The complainant argued that ASPA has now changed substantially, in order to transpose EU Directive 2010/63 into domestic law. He further explained that the Commissioner should approach this complaint based on the current legislation. As the Commissioner must consider the circumstances at the time of the request he has focused on the current version of ASPA as it was in force at that time.
30. The complainant subsequently invited the Commissioner to require the University to supply the requested information.

The Commissioner's View

31. The Commissioner must stress that he can only make a decision on whether the University was correct to apply section 12 to the request, rather than whether the information should already be collated and readily available under different legislation.
32. As indicated in paragraph 22, the University has explained that there is no requirement in ASPA for it to have the requested information collated and readily available at all times, contrary to the complainant's apparent expectation. The Commissioner's understanding is that the ASPA Amendment Regulations 2012 Schedule 3 part 2 section 8(1) requires that "records shall be maintained, in a format acceptable to the Secretary of State". In view of this and to inform his decision, the Commissioner sought clarification from the University about any requirements imposed upon it by way of guidance, rules or advice in this

² https://ico.org.uk/media/action-weve-taken/decision-notice/2012/769792/fs_50449254.pdf

regard. The University has confirmed that no such requirements have been imposed. Therefore, the Commissioner's understanding is that, in the event of a request from the Secretary of State, the University would need to collate the required information from its existing locations with licence holders.

33. As mentioned above it is not within the Commissioner's remit to assess the University's compliance with ASPA. However, he does wish to clarify that whether or not the University can rely upon section 12 of FOIA is a matter of fact. Therefore if, as a matter of fact, the University does not hold the information in the way that the complainant considers it is obliged to under ASPA (whether or not this is actually a requirement) and the way that it is held means that it would cost in excess of £450 to collate it then the University can rely upon section 12 of FOIA as a basis for refusal.
34. On the basis of the submissions provided by the University, the Commissioner is satisfied that the requested information is not readily available and that if the University were to comply with the request, it would exceed the appropriate cost limit. The Commissioner accepts that 20 minutes per licence is a reasonable amount of time to check that the information is within the specified timeframe (i.e. 2013), to identify the number and species of animal and the purpose of the research. In reaching this decision the Commissioner has noted that some of the licences are in excess of 100 pages.
35. Moreover the Commissioner recognises that in a previous decision notice³ he upheld the University's position that an average time of 20-30 minutes was reasonable. He acknowledges that in that case it was necessary to extract more information than in the present case. However, in this case he has accepted the lower end of the estimated time per licence and notes that in 2013 the University has stated that there would have been more than 60 licences, thus increasing the overall cost beyond the 20 hours cited previously.
36. The Commissioner is therefore satisfied that the University correctly applied section 12 to the request.

³ https://ico.org.uk/media/action-weve-taken/decision-notice/2012/769792/fs_50449254.pdf

Right of appeal

37. 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

38. 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.
39. 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

Jo Pedder
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