

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 November 2010

Public Authority: The Department for Education
Address: Sanctuary Buildings
Great Smith Street
Westminster
London
SW1P 3BT

Summary

On 31 March 2010 the complainant requested that the Department for Education (the 'DfE') (then the Department for Children Schools and Families) provide him with the names and rail expenses of staff at all grades of SEO and above who had travelled first class and standard class between Darlington and London in 2008. The DfE refused the request as too costly under the Freedom of Information Act 2000. It also argued that even if provided, the information would not be accurate. The Commissioner upholds the application of section 12(1); however he finds the DfE to be in breach of section 16. The Commissioner considers that although the DfE cannot guarantee the accuracy of the requested information, it could provide the complainant with advice and assistance to help him refine his request and bring it within the cost limits. The Commissioner also finds the DfE to be in breach of section 17(5) of the Act as it failed to cite section 12(1) in its refusal notice.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. On 15 September 2009 the complainant originally requested that the Department for Education (then the Department for Children, Schools and Families) should provide him with information concerning its policy regarding first class rail travel. He also required detail of the total rail travel cost incurred in 2008 for staff travelling from Sheffield and Darlington to London on official business, with a breakdown of the number of journeys taken as first class and as standard class. He wanted to know the names of staff who made such first class rail journeys in 2008 and the total amount claimed.
3. On 7 October 2009 the Department for Education (the 'DfE') replied to this request and provided the complainant with the information he requested except the information relating to the names of staff who had travelled by first class rail to London in 2008. It also refused the amounts claimed for each individual.
4. On 21 October 2009 the Commissioner received a complaint about the DfE's response and failure to provide an internal review regarding the above request.
5. Following the intervention of the Commissioner, on 10 March 2010 the DfE provided an internal review of its response. The DfE informed the complainant that it would not provide the requested information as it was too costly. The DfE explained how the information was held and why it could not be provided fully or accurately.
6. On 25 March 2010 the complainant informed the Commissioner that he was not satisfied with the results of the internal review. He also informed the Commissioner that he wished to narrow his request.
7. On 30 March 2010 the Commissioner asked the complainant to submit his narrowed request to the DfE. The Commissioner explained that given the circumstances of this case, should the complainant remain dissatisfied with the response of the DfE to his new request, the Commissioner would progress this case without an internal review.

The Request

8. On 31 March 2010 the complainant refined his request and resubmitted it to the DfE. He asked that the DfE provide him with:

"...the staff names (as set out in my previous request) – for staff at SEO and above – who are based in your Darlington office and who undertook rail journeys in 2008 claims for business purposes only."

9. On 23 April 2010, the DfE responded to this refined request. It confirmed that it had assumed that the complainant required the same breakdown of information as had been originally requested but for a narrower band of civil service grades.
10. The DfE again stated that it was not able to provide the required information because it is not held in the format requested. It could not therefore collate the information fully or accurately and argued that to do so would exceed the costs set out in the Fees Regulations. It explained that the refined request did not help it to surmount the cost issues as outlined in its previous response. To illustrate this point, it explained how the information was held.

The Investigation

Scope of the case

11. On 29 April 2010 the complainant wrote to the Commissioner about the new response of the DfE. He believed his request was very narrow in focus and did not accept that the DfE could not isolate the identity and costs of rail travel for each of the 100 or so staff at SEO level or above based at its Darlington office. He believed the DfE should provide the information in the interests of transparency and openness.
12. On 9 May 2010 the complainant clarified that this request was for the names of staff at grade SEO and above, who travelled first and second class business travel between Darlington and London, plus the amounts claimed.

Chronology

13. On 10 May 2010 the Commissioner wrote to the DfE and asked it to clarify how it held the requested information. He also asked the DfE to provide a more detailed cost estimate of the time it would take to find the requested information and to perform a representative search. Furthermore the Commissioner asked the DfE to consider what advice and assistance, if any, could be provided under section 16 of the Act.

14. On 7 June 2010 the DfE provided further detail regarding how it held the requested information and therefore clarifying why it could not be provided within the cost limits. It provided an outline of the estimated time it would take to provide the information but had not undertaken a search for a representative sample as this would have taken too much time.
15. On 14 June 2010 the Commissioner requested that the DfE should undertake a search for the information with respect to one senior representative person. The Commissioner suggested that this might make it possible to offer the complainant the opportunity to refine his request further and identify a smaller number of people for whom the information could be provided. The Commissioner also asked the DfE to provide further detail with regard to how the information was held.
16. On 24 June 2010 the DfE provided the above requested detail and clarified the timings involved in providing the information for one person: the Director of the Commercial Group. This was then extrapolated to 120 individuals and amounted to 49.5 hours.
17. On 25 June 2010 the Commissioner asked the DfE to send him a copy of the spreadsheets (or an extract of them) as referenced at each of the four stages identified in the costing exercise. He explained that the DfE could not claim for 4 hours of lunch and other breaks. The total time therefore amounted to 45.5 hours.
18. On 13 July 2010 the DfE sent the Commissioner the requested spreadsheets.
19. On 19 and 20 July 2010 the Commissioner discussed his conclusions with the DfE and confirmed these points in an email on 20 July 2010.
20. On 23 July 2010 the DfE confirmed the points made in the Commissioner's email.

Findings of fact

21. 1508 first class and 989 standard class rail journeys were made from Darlington to London in 2008. This information was provided to the complainant on 10 March 2010 in response to his first information request.
22. There are 120 individuals of SEO grade or above in Darlington.

Analysis

23. The full text of section 12, section 16 and section 17(5) can be found in the Legal Annex at the end of this Decision Notice.

Substantive Procedural Matters

Section 12

24. Section 12(1) states:

'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.'

25. The current appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. For central government this cost limit is currently set at £600 and equates to 24 hours of work at £25 per hour.
26. The DfE has calculated it would take 45½ hours to compile the requested information regarding first class travel only. However, as the complainant has actually requested both standard and first class, it is apparent that this would take longer than the above estimate.
27. The DfE has explained that it is unable to provide the information as it does not hold it in the format requested. It also explained that it cannot collate the information fully or accurately. This is because the information regarding rail travel is held in two separate systems: the system maintained by its Booking Agent and the expenses system of the DfE itself. The only way to provide the requested information is to cross check the details held on each system. Even if this activity is completed, the resulting information may still not be accurate.

Information held by the Booking Agent

28. Employees of the DfE may book train tickets through a Booking Agent. The Booking Agent records each transaction and the information it holds includes the name of the individual who booked the ticket(s), the class of the ticket and the journey details.

29. However, one individual may book multiple rail tickets for other people. The names of those others are not recorded. One booking may therefore have been made for multiple people but it would only appear under one name.
30. It is also possible that one individual may book rail journeys for others and not himself/herself.

Information held on the expenses system of the DfE

31. The expenses system of the DfE contains records for all expenses claimed. This therefore holds the name of the claimant and the date and amount of the claim. There is other information in each record but no data is kept concerning the details of any travel or of the destination of journeys undertaken.
32. If a train was booked via the Booking Agent, there may be a corresponding subsistence claim on the DfE expenses system for that journey made by the same person. It would therefore be possible to cross check by date and name that an individual actually made a journey for which he/she bought tickets.
33. The DfE's system might also hold a subsistence expense claim for which there would be no obvious rail claim. An individual might have made a rail journey and made a subsistence claim for the trip, but the ticket may have been booked by another person via the Booking Agent. There would therefore be no explicit link by an individual's name to a rail journey which had been booked by someone else. There might only be link by date ie. the date the ticket was booked by someone else via the Booking Agent and the date a subsistence claim was made recorded on the expenses system.
34. In addition to the above variations, employees may also claim for rail tickets which have been bought using the company procurement card. This claim would therefore appear on the expenses system of the DfE but not on the Booking Agent's system.
35. However, such a record on the expenses system contains no direct indication of whether the expense is specifically for a rail journey. There are no details regarding the class of ticket purchased, or the details of the journey.
36. The only relevant details recorded for such an expense are the payee of the transaction and the amount paid on the card.

37. To extract such train travel from this system would require that each record which appears to be for travel is examined to see if it is likely to be for train travel. The cost of the ticket is the only indicator as to the class of the ticket.

Estimate of Cost

38. The DfE has provided a breakdown of costs to the ICO regarding this request. This relates to first class travel only.
39. Step 1: It took 15 minutes to download the information held in the records of the Booking Agent for one month. For one year this took 180 minutes or 3 hours. To aggregate, format and filter this information took 30 minutes.
40. Step 2: The creation of a spreadsheet showing an individual's 2008 expenses based on the information held in the DfE's expenses system took 2 minutes per person. For 120 individuals this would take 240 minutes or 4 hours.
41. Step 3: The DfE completed an initial filter to remove from the above spreadsheet of expenses those that were clearly nothing to do with first class travel, which took an average of 5 minutes per individual. This was to allow it to conduct a more detailed analysis of the remaining information. For 120 individuals this would take 600 minutes or 10 hours.
42. Step 4: The checking of the spreadsheet to ensure that the expenses related to first class train travel took 14 minutes per individual. For 120 individuals this would take 1680 minutes or 28 hours.
43. This involves checking against the Booking Agent's system to verify that a rail journey was made on the same date subsistence expenses were claimed. This would confirm that an individual who booked train tickets actually made a journey.
44. This also involves checking the date of a subsistence expenses entry against a date of travel for tickets booked via the Agents Booking system under someone else's name.
45. It also involves checking the expenses spreadsheet for all entries which might be related to train travel booked directly using a company card. A judgement would then be made as to whether it was likely to have been first or standard class travel. The destination of the journey would also not be known.

46. The DfE has indicated that this information may be inaccurate and that it would therefore have to be checked with the individuals concerned. However as the Act is only concerned with the provision of recorded information, the Commissioner would not expect such a check to be made.
47. The DfE has estimated that to collate this information for 120 individuals would therefore take 45½ hours. This comprises:
- | | | |
|---------|------------------------|-------------------------|
| Step 1: | 3½ hours | |
| Step 2: | 2 minutes per person; | 4 hours for 120 people |
| Step 3: | 5 minutes per person; | 10 hours for 120 people |
| Step 4: | 14 minutes per person; | 28 hours for 120 people |
48. It is apparent that once the first spreadsheet from the booking Agent has been completed in 3½ hours, it would take an average of 21 minutes per person to extract and verify the relevant information from the expenses system of the DfE.
49. The Commissioner is aware that the estimate is based on a representative search for the expenses of a Director and that such a senior individual may travel more than another senior member of staff. It might therefore be that 45½ hours is a generous total estimate. However, even if this amount of time was halved to 10½ minutes per person, the total amount of time would still exceed 24 hours.
50. The Commissioner specifically questioned the 14 minutes required for step 4 and the DfE confirmed that this was the amount of time it would take to check and reduce the two separate lists of an individual's travel and expenses and then put them together to make a 'record'.
51. The Commissioner has examined sample spreadsheets provided by the DfE and is satisfied that it would take this amount of time to provide the information requested regarding first class travel. To provide the standard class travel for the year would involve more time again.
52. In view of the above, the conclusion of the Commissioner is that the DfE was correct to refuse this request under section 12 of the Act.
53. This is because it holds travel information in two separate systems and each set of information is incomplete for the purposes of the request. The travel details required cannot be accessed directly by the names of the individuals concerned and is only held either as ticket booking data or as expenses data. Neither provides a complete picture of exactly who has travelled by rail between Darlington and London.

54. In addition, the Commissioner is satisfied that even if this exercise was undertaken, the information that would result may not be accurate. There are rail journeys made which are not explicitly recorded under the name of the traveller and there are expense claims regarding rail journeys for which all details are not recorded.

Section 16

55. However, the approach of the Tribunal in the case of *Home Office v ICO (EA/2008/0027)* is relevant here. The Tribunal in that case found that “...if the records are faulty or inadequate and the information therefore turns out to be inaccurate that is irrelevant: the right under the Act is to information which is held, not information which is accurate.” In view of this, the Commissioner has clarified with the complainant whether, given that the DfE does not believe that any information it could provide would be accurate, he would like to refine his request of 31 March 2010. The complainant has confirmed that he would wish to do so.
56. The Commissioner is therefore of the view that, in this case, it would therefore appear that the DfE is able to offer the complainant advice and assistance under section 16 of the Act. Although it considers that the information it could provide would not be accurate, it is still possible for the DfE to offer the complainant some of the recorded information it does hold within the cost limit. In view of the time estimate given, it should be possible, for example, to provide the first class train expenses of a smaller number of senior members of staff based at the Darlington office in 2008. The DfE should also be able to estimate how long it would take to provide the equivalent standard class travel for a smaller number of staff.
57. The initial spreadsheet of first class travel information from the Booking Agent was created in 3½ hours and the DfE estimates that it would now take an average of 21 minutes per person to collate and verify the remaining information. This breakdown suggests that it should be possible for the DfE to offer the complainant the first class travel expenses of approximately 61 people within the cost limit. The information provided may not be accurate but the Commissioner considers that if it is held and can be collated within the cost limit, the complainant should be given the opportunity to narrow his request accordingly.

Procedural Requirements

58. Section 17(5) states that should a public authority claim that the information requested is exempt under section 12, it should give the applicant a notice stating that fact. In its response to the complainant, the DfE explained that it was not providing the information as to do so "would be in excess of the fees set out in the regulations". In failing to cite the relevant exemption in this response, the DfE is found to be in breach of section 17(5).

The Decision

59. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The DfE correctly applied section 12(1) to the request for information.
60. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The DfE failed to offer the complainant advice and assistance under section 16 of the Act.
 - The DfE is found to be in breach of section 17(5) as it failed to cite the relevant exemption in its response to the complainant.

Steps Required

61. The Commissioner requires that the DfE should provide the complainant with advice and assistance under section 16 of the Act to help him to refine the scope of his request in order to bring it within the costs limit.

Failure to comply

62. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court

(or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

63. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 22nd day of November 2010

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“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.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that -

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.”

Section 16 - Duty to provide advice and assistance

- (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.

Refusal of Request

Section 17(5) provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1 (1), give the applicant notice stating that fact".