

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2012

Public Authority: Foreign & Commonwealth Office
Address: Old Admiralty Building
London
SW1A 2PA

Decision (including any steps)

1. The complainant has requested information relating to the payment for private education for the public authority's staff. Some information was provided but the remainder was refused on the grounds that provision would exceed the appropriate limit at section 12(1) of the FOIA. The Information Commissioner's decision is that the public authority has correctly applied section 12(1) of FOIA as a basis for non-disclosure of the requested information. However, it did breach section 16.

Background

2. An earlier decision notice has been issued in respect of this request regarding failure to respond. This can be found on the Information Commissioner's website¹.

Request and response

3. On 7 June 2011, the complainant wrote to the public authority and requested information in the following terms:

¹http://www.ico.gov.uk/~media/documents/decisionnotices/2012/FS_50410402.ashx

- *"How much was the total cost of private education of the children of the FCO to taxpayers over the last five years (information for each year separately please)?*
 - *Of this total, how much was spent on schools in Wales (again, information for each year separately)?*
 - *Of this total the amount spent on families whose home address is in Wales in the UK (again, information for each year separately)?*
 - *What is the average pay of the people who educate their children privately at the expense of taxpayers?"*
4. The public authority responded on 2 April 2012. It provided some information and did not cite any exemptions. The complainant asked for an internal review on 3 April 2012.
5. Following an internal review the public authority wrote to the complainant on 31 May 2012. It advised that to provide a response to the latter three parts of the request would exceed the appropriate limit.
6. During the course of the Information Commissioner's investigation the complainant submitted a further request to the public authority in respect of the final bullet point of his original request. The public authority provided a response to this and the complainant confirmed that he was therefore happy to remove it from the scope of this complaint.

Scope of the case

7. On 29 June 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He referred to some information that the public authority had recently provided to him (not as a result of this particular request) and his belief that it indicated that the public authority should have been able to provide the remaining information in this request within the appropriate limit.
8. The Information Commissioner will therefore consider the public authority's application of section 12 to the second and third bullet points of the original request, ie those specifically relating to Wales.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) 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 limit.
10. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
11. Paragraph 4(3) of the Regulations states:

"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in -

 - (a) determining whether it holds the information,*
 - (b) locating the information, or a document which may contain the information,*
 - (c) retrieving the information, or a document which may contain the information, and*
 - (d) extracting the information from a document containing it."*
12. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. As this public authority is a central government department, the cost limit in its case is £600, which is equivalent to 24 hours' work.
13. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
14. The Information Commissioner raised queries with the public authority to ascertain how it held the requested information and why its provision would exceed the appropriate limit.
15. The public authority provided the following explanation in respect of part (2) of the request:

"...

 - *The majority of management information is stored on paper files. There is a separate paper file for each staff member claiming*

Continuity of Education Allowance (CEA), (which numbered around 450 in 2011/12). The files are set up per family from the start of their CEA claims rather than per financial year. Some of the files will also hold information on claims made for older children which have now ceased, possibly including children at schools in Wales. Families do not always use the same school or pattern of schools for their children.

- *When a child leaves school, if there are no younger siblings being claimed for at that time, the family file is sent to the archives at Milton Keynes. Our records show that in the last 2 years 99 such files were sent to the Archives. I would expect there also to be other old CEA files already in the archives of which the present Education Team members have no knowledge. We would need to ask our archive colleagues to see what they have.*
- *If we are to be sure to identify all children who have been at school in Wales, and the respective costs per financial year during the period requested, we will need to look into current family files and request all the old CEA family files from the Archives. Assuming we would need an average of 3 minutes per file, for at least 550 known current or recent CEA claimants, we'd need 27.5 hours to determine the accurate answer for part 2 of the FOI request".*

16. The public authority also provided the following explanation in respect of part (3) of the request:

"We do not routinely see or hold home address details of CEA claimants. The information is not required as part of the claims process. Home address information is held on our Enterprise Resource Planning (ERP) system, but not in a consistent form, not necessarily up to date, and not necessarily a UK address. Some officers do not own or maintain property in the UK while serving overseas. Others rent property within reasonable commuting distance of their FCO workplace when serving in the UK. Staff are not required to update the information or reconfirm that it is correct at regular intervals.

I am informed that there are around 18,000 UK-based staff records (current and former staff) in one form or another on the system. It is possible to search for home addresses, but the system cannot identify in one search all staff who have ever given a home address in Wales. The search facility requires the requester to enter an effective date (i.e. one specific date) against which a search will be made. So to ensure that we

captured all entries for Wales (where they had ever been stored on the system), we would need potentially to run thousands of searches using each date within the applicable period as a search parameter. Using one random date each year may miss an address recorded on a different date in the same year. This work would also involve searching by country, county, individual places and postcodes in Wales, as colleagues who have provided a home addresses may not have entered them consistently. Searching by village/town or city would require cross referencing with a map, to determine which are located in Wales. We'd need info from the Post Office (assuming it's available) for a search of postcodes in Wales. This would be very time consuming and labour intensive.

We would then need to cross reference information obtained from the manual searches of the files carried out under part two of the FOI request, with the results of the ERP system searches on home addresses to produce the final answer. Questions two and three are closely related. I see no obvious way of doing one without the other”.

17. The public authority confirmed that the above methods of gathering the requested information were the quickest possible. It further advised that it had not found it possible to suggest ways of refining the requests to the complainant as the information is not held centrally.
18. As stated above, the Information Commissioner does not require a precise calculation from a public authority, just a reasonable estimate. Having considered the estimates provided, he finds that they are realistic and reasonable. He therefore accepts that to provide the information would exceed the appropriate limit.

Section 16 – advice and assistance

19. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Information Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
20. In this case the public authority has explained to the Information Commissioner about how it holds the requested information and why compliance would exceed the limit. It has also advised him that it can

see no way of refining the request to keep it within the limit as the information is not centrally held.

21. The Information Commissioner cannot see any easy way of refining the complainant's request to keep it within the appropriate limit. However, he notes that the public authority provided the complainant with little explanation about how its records are held and, had it offered more detail, he may have been able to come up with an alternative suggestion. The Information Commissioner therefore concludes that the public authority did not provide adequate advice and assistance, breaching this section because of the lack of explanation offered to the complainant. However, as a more detailed explanation has now been offered he requires no further steps to be taken.

Other matters

22. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.
23. Having taken almost 10 months to respond to the initial request the Information Commissioner is disappointed that the eventual response did not provide much detail in respect of these remaining parts of the request. Furthermore, the length of time to conduct an internal review exceeded the recommended 20 days and the eventual response again provides very little detail. The Information Commissioner has recorded these delays and poor responses within his enforcement section for monitoring.

Right of appeal

24. 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: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

25. 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.
26. 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

**Jon Manners
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