

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2013

Public Authority: The Governing Body of The Manchester College

Address: Ashton Old Road

Openshaw

Manchester

M11 2WH

Decision (including any steps ordered)

1. The complainant has requested information on unfair dismissals at The Manchester College and MANCAT. The Manchester College refused to provide the requested information as it considered to do so would exceed the appropriate cost limit under the FOIA.
2. The Commissioner's decision is that The Manchester College has provided a reasonable estimate of the costs associated with complying with the request and has therefore correctly applied section 12 of the FOIA to refuse the request.

Request and response

3. On 8 October 2012 the complainant wrote to The Manchester College ("the College") and requested information in the following terms:

"Regarding cases of unfair dismissal: How much has been spent in legal fees and how much in financial settlements has Mancat/The Manchester College paid former members of staff from January 2005 to October 2012?"

How many claims were there in total?

How many people won their claim at Tribunal?

How many lost?

How many settled unfair dismissal claims out of tribunal/court?

How many cases are on-going and have yet to be resolved?

In how many cases did Mancat/The Manchester College request so-called compromise agreements/gagging orders?"

4. The College responded on 22 October 2012. It stated that it considered the exemptions at section 40 (personal information), section 41 (information provided in confidence), section 42 (legal professional privilege) and section 43 (commercial interests) may be engaged. However, the College explained that the information was held in a number of different formats and locations and to locate and retrieve the information would exceed 18 hours and therefore the cost limit of £450 under section 12 of the FOIA. The College explained that the issue in this case was that the information had been requested dating back to 2005 but if the complainant refined his request to just the information from the last two years then it may be possible to locate, retrieve, extract and compile the information within the cost limit.
5. Following an internal review the College wrote to the complainant on 5 November 2012. It stated that the information as requested was not held and as no refinement of the request had been made (apart from the complainant agreeing the compromise agreements could be excluded) the College was unable to "*consider preparing the record*".
6. The College also explained that it considered some information was publicly accessible by other means (section 21 of the FOIA) and directed the complainant to the Employment Tribunal's website to obtain some of the information.

Scope of the case

7. The complainant contacted the Commissioner on 13 November 2012 to complain about the way his request for information had been handled.
8. The complainant indicated he was prepared to drop the part of his request relating to gagging orders and confidentiality but maintained he still required the remainder of the information.
9. The College had indicated in its internal review response that "*the record you have requested does not exist*" but then also went on to state that unless the request was refined as set out in the refusal notice it could not be complied with as to comply with the request with its current parameters would exceed the cost limit of £450.

10. The Commissioner considers the scope of his investigation to be to determine whether the College has correctly applied section 12 of the FOIA to the remaining information and that the cost of complying with the request would exceed the appropriate cost limit.

Reasons for decision

11. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the public authority in question. A public authority can charge a maximum of £25 per hour of staff time for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken 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.
13. To determine whether the College applied section 12 of the FOIA correctly the Commissioner has considered the responses provided to the complainant by the College and the submissions provided to the Commissioner during his investigation.
14. The College did not provide any explanations for its reliance on section 12 in either its refusal notice or internal review response. As a result the Commissioner asked the College to provide detailed explanations and estimates to support its decision that complying with the request would exceed the appropriate cost limit of £450.
15. In explaining its reliance on section 12 the College firstly clarified that much of the information requested would be held in paper form and only

that relating to more recent years would be likely to be digitised. The College has also been unable to state that the information would be held as some of the information will relate to Mancat¹ and some of the information may have been deleted in line with the College's retention policy.

16. However, if the information was held the College considers it would be in one of the archive sites it uses. Of these sites, one is located on one of the College's campuses and the other in an archive in Cheshire which is managed by a third party. In order to determine whether the information is held, locate it, retrieve it and extract it the College argues it would need to retrieve paper records from these archive sites.
17. In the event that the information is held by the College in its archives it considers it would be held in HR records, finance and payroll records and personnel committee/governance records.
18. The College has explained that there are different time and cost considerations associated with the retrieval of records from the different archive sites. For the retrieval of records from the archive in Cheshire the College would need to contact the third party who would charge a rate of £1.50 per box and a charge of £23 for every 20 boxes that are then transported. The College has estimated that it would need to recover over 1000 boxes from this archive in order to locate and extract the information.
19. For the records from the College campus the costs would be considerably lower as the records could be retrieved by a member of staff. The records stored on campus include student records and the College estimates that a further 500 boxes may need to be searched. The College considers this would take a member of staff approximately 16 weeks to locate the relevant records in this archive.
20. Having retrieved the boxes likely to contain the relevant information from the archive sites the College then considers a member of staff would need to examine each box and each file in the box to establish whether the record is relevant. The College has estimated it would take 2 hours to search each box and therefore it would take over 3000 hours (or 86) weeks to identify and extract any relevant information from the boxes.

¹ Mancat and City College Manchester merged in 2008 to form The Manchester College

21. The College also considers additional time would then need to be factored in to compile the information as it would be unlikely to be in a format that would meet the request. To explain this further the College used the example of compromise agreements and indicated that in some cases these would be kept on personnel files but other times were held in a separate HR file. Even once retrieved these records would need to be reconciled with finance records to ensure accuracy of the financial information. The College has not provided a precise estimate for this activity but has told the Commissioner it believes this may take a full time member of staff 26 weeks to achieve.
22. To justify its estimates the College has pointed to a previous similar exercise it conducted which involved having to collate personnel information in relation to 900 employees who were transferring to another employer under the Transfer of Undertakings Regulations (TUPE). In this example the College explained it was required to provide the new employer with Employee Liability Information for all 900 employees and a full time employee took 13 weeks (spending 50% of their time) to collate the information from HR boxes. These boxes contained approximately 30 files in each box and it took the member of staff effectively 6 weeks to collate information from just 30 boxes. Therefore the College considers that if this is extrapolated the time it would take to comply with the complainant's request would be approximately 300 weeks as nearer 1000 boxes would have to be searched.
23. Having considered the estimate provided by the College the Commissioner looked at this in conjunction with reviewing his guidance on section 12². In particular when the Commissioner is considering the application of section 12 he is mindful of the fact that a public authority can only take account of costs it reasonably expects to incur and the £25 per hour rate is only applicable to costs that are attributable to staff time.
24. The Commissioner therefore asked the College some further questions about the estimate provided, in particular about the number of boxes the College had estimated would need to be searched. Whilst the Commissioner accepted that basing the estimate on the time taken to search the same boxes in a recent exercise was reasonable, he had

2

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx

some further questions for the College in order to ascertain why such a high number of boxes would need to be searched and why the College considered these boxes likely to contain the information requested.

25. The Commissioner therefore questioned the College as to why it had stated approximately 1,500 boxes would need to be searched. The College again explained this is based on the previous exercise and clarified there is no cataloguing or indexing system which would make it possible to identify which boxes are likely to contain the information requested. The College would have to search any archived HR or finance files for the prescribed time period requiring the College to retrieve all boxes for the period in question and search each file in each box to determine whether the information is relevant to the request.
26. The Commissioner is therefore minded to accept that it may be difficult to establish what boxes the information is in and the previous exercise allowed the College to estimate approximately 1,500 HR and finance boxes had been archived for the time period covered by the request. That being said, he questioned the College further on the use of two different archives: one in Cheshire and the other at the Openshaw campus of the College.
27. The College explained that once files are boxed up for archiving they are initially stored at the campus but as there is limited space there boxes are moved to the third party store in Cheshire. This process is done in date order i.e. the oldest boxes are moved to the store in Cheshire leaving room in the campus archive site for newer archive material. The College in this case would therefore need to retrieve information from both sites as the older archived material would be in the Cheshire store and the newer archived material in the campus archive.
28. The Commissioner also asked the College for clarification regarding the cost of recovering boxes from the Cheshire archive. The College informed the Commissioner that it has a contractual agreement with the third party provider which involves a recovery cost charge of £1.50 per box. On top of this the College is then also charged £23 for every 20 boxes which need to be transported from the archive to the College.
29. As the College has estimated 1,000 boxes would need to be retrieved and searched from the Cheshire archive and the charge for retrieval would be £1.50 per box this cost alone would exceed the appropriate cost limit of £450 assuming it could be linked to one of the activities at paragraph 11. The Commissioner's view is that the cost associated with retrieval of the boxes from the Cheshire archive can clearly be seen as part of the process for determining if information is held, locating it and retrieving it. Furthermore the Commissioner notes that even if the College had overestimated the number of boxes that would need to be

retrieved the contractual cost of £1.50 for retrieval would mean even retrieving less than half this number of boxes would exceed the cost limit.

30. In light of the above, the Commissioner is minded to accept that even without including the costs associated with the searching time (which the College has estimated to be approximately 2 hours per box at £25 per hour of staff time) the estimate provided by the College would exceed the cost limit and therefore the request was correctly refused under section 12 of the FOIA.

Section 16 – advice and assistance

31. Section 16(1) of the 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 good practice contained within the section 45 code of practice³ (the code) in providing advice and assistance, it will have complied with section 16(1).
32. The code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit, it should provide the requester with reasonable advice and assistance.
33. The Commissioner's guidance states that the minimum a public authority should do in order to satisfy section 16 is indicate if it is not able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit.
34. In this instance, the College's refusal notice explained the information could not be provided within the appropriate limit and explained it was due to the requested information dating back to 2005. The College explained that if the request was refined to just the last two years then it may be possible to locate, retrieve and extract the information within the appropriate limit.

³ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

35. On the basis of the College's response the Commissioner is satisfied it would have been clear to the complainant that the request could have been refined to potentially bring it within the appropriate limit.
36. The Commissioner has therefore concluded that, in handling the request, the College provided such advice and assistance as was reasonable and that it complied with section 16(1).

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

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