

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 May 2013

Public Authority: The Science Museum Group
Address: Exhibition Road
London
SW7 2DD

Decision (including any steps ordered)

1. The complainant has requested the register of interests of senior personnel at the National Railway Museum dating back to 2003. The National Railway Museum (NRM) is part of the Science Museum Group but for the purposes of this notice the Commissioner will continue to refer to the NRM. The NRM 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 NRM 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. The complainant initially wrote to the NRM on 6 July 2012 to ask for information on the registering of interests of senior personnel at the NRM with specific reference to one of the NRM's directors.
4. Following this the complainant wrote to the NRM again on 9 July 2012 and asked:

"The NRM has stated that there are no questions regarding Mrs Ashby's registering of interests. The NRM also states Mrs Ashby was required to have registered her interests from 2003. A hand-written note was provided to Mrs Ashby in June 2009. The existence of the note suggests there was no prior registering of interests otherwise there would have

been no need for the note itself. The NRM itself has apparently no record of any previous recording of interests. How does the NRM square this position with its contention there are no questions regarding Mrs Ashby's registering of interests?"

5. The NRM responded to this on 13 July 2012 and explained that the director in question had complied with reporting requirements since 2003 and copies of paper records, including register of interest information, would have been placed in deep storage prior to 2009. To retrieve this information would exceed the cost limit set out in the FOIA. The NRM did however provide the complainant with other information which could be more easily obtained including a hand written letter supplied to the NRM.
6. The complainant responded on the same day and reiterated his requirement for *"the evidence the NRM holds that Mrs Ashby recorded her interest regarding her husband working at and receiving contracts from the NRM since 2003."* The NRM responded and stated the costs associated with retrieving records from deep storage would exceed the cost limit for dealing with the request.
7. A further response was sent by the NRM on 17 July 2012 explaining that the Science Museum Group's (SMG) records are stored in hangers at a former air-force base in Wroughton, near Swindon. Retrieving the records would require a member of NRM staff travelling from York to Wroughton or having the pallet containing the information returned to the NRM by making special arrangements as no regular van service operates between the sites.
8. The complainant wrote to the NRM again on 17 July 2012 to ask for further clarification to which the NRM responded on 20 July. This response clarified that the register of interests post-2010 is held electronically but the paper records pre-2010 are archived off-site in Wroughton and whilst a member of staff could attend the site it would exceed the cost limit to do so.
9. The NRM did not treat this as a request for an internal review and the Commissioner agreed that it was not clear that this request for further clarification was in fact a request for an internal review. The complainant therefore wrote to the NRM on 25 September 2012 to ask for an internal review of *"the inability of the NRM to access the records within the time limit."*
10. An internal review was conducted by the NRM and the outcome communicated to the complainant on 26 October 2012. In this review the NRM provided some further detail of the basis on which it considered section 12 applied.

Scope of the case

11. The complainant contacted the Commissioner after the internal review on 19 November 2012 to complain about the way his request for information had been handled.
12. The Commissioner considers the scope of his investigation to be to determine whether the NRM has correctly applied section 12 of the FOIA and that the cost of complying with the request would exceed the appropriate cost limit.

Reasons for decision

13. 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.
14. 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.
15. To determine whether the NRM applied section 12 of the FOIA correctly the Commissioner has considered the responses provided to the complainant by the NRM and the submissions provided to the Commissioner during his investigation.
16. In its internal review response the NRM explained in more detail how it had reached the conclusion that it would exceed the cost limit to comply with the request. One of the key factors was the location of the archived information at Wroughton, near Swindon. The NRM itself is based in York and the SMG in London and travel from either location to identify

and retrieve the requested information was estimated to exceed the cost limit.

17. The NRM had estimated that a return journey for a member of staff travelling between York and Wroughton would take 8 hours and require an overnight stay. The NRM therefore considered another 10 hours could be included in the estimate taking the total of hours to 18 just for travelling and an overnight stay without even factoring in the time required to locate, retrieve and extract the information on the site. As well as this the NRM also explained it would include the additional costs associated with this process such as the rail fares, taxi fares and overnight accommodation costs.
18. The NRM also considered whether it was possible to ship the relevant pallets containing the information from Wroughton to York in order for the retrieval and extraction of the information to take place in York but as this would include the use of contract staff and drivers it was decided that this would be even more likely to exceed the cost limit.
19. The complainant had suggested that the costs could be reduced by sending a member of staff from SMG's offices in London instead. The NRM considered this and concluded that an overnight stay would not be required but the return journey would still be approximately 5 hours and the site search 7 hours. Although the time would be below the 18 hour limit the NRM considered that this when costed up alongside the rail fare of £70 and the taxi fares of £40 would exceed the cost limit.
20. Having reviewed this response from the NRM the Commissioner considers the estimate provided by the public authority to be based on the following:

Travel time (4hrs each way) 8hrs at £25/hr	= £200
Search time 7hrs at £25/hr	= £175
Assistance with search 4hrs at £25/hr	= £100
Overnight stay 10hrs at £25/hr	= £250
Rail fare	= £215
Taxi fare	= £40
Accommodation	= £50
Total	= £1030

21. Having considered the estimate provided by the NRM in the internal review response the Commissioner looked at the breakdown in

conjunction with reviewing his guidance on section 12¹. 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 which it expects to incur and secondly the £25 per hour rate is only applicable to costs that are attributable to staff time.

22. The Commissioner would generally accept that if the activities as listed in the breakdown above can be shown to be a necessary part of locating and retrieving the documents then the costs, including the cost of the overnight accommodation, would be incurred as part of the retrieval process and therefore be able to be included in the estimate.
23. As a result the Commissioner asked the NRM some further questions about the estimate provided, in particular in relation to the overnight accommodation costs and the inclusion of costs attributable to staff time for an overnight stay, the travelling time and what other alternatives had been considered.
24. In terms of the travel time the NRM explained that a return journey from York would take between 8 and 9 hours including a train journey and taxi rides from Swindon to Wroughton. The NRM considered this to be a necessary part of locating and retrieving the information as the low levels of staffing at Wroughton necessitates sending staff from York to carry out the search. In addition to this the search would need to be carried out by an individual with the appropriate knowledge and experience to identify the correct information. The NRM were of the view that sending a member of staff trained in either FOI or HR issues would be more time-efficient and also ensure confidentiality.
25. The Commissioner also asked the NRM for further information to explain why it considered it would take 7 hours to conduct a search and why assistance was also needed from on-site staff. In response the NRM explained that the information requested in this case is stored as part of a bulk of other personnel and financial documentation held in boxes stored on pallets. These are on racking from the ground to about 10 metres high and are across several airport hangers. Each pallet holds 35 to 40 boxes and each box only contains a brief description written on the side.

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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

26. The Commissioner questioned the NRM as to whether there was an electronic database which contained information on the contents and locations of the boxes in order to speed up the process. The NRM has explained that there is an electronic cataloguing system which provides more information on the contents of the boxes but it has not been applied retrospectively so would not be of assistance in this case.
27. The Commissioner is therefore minded to accept that it may be difficult to establish what boxes the information is in and the NRM has further explained that the boxes are stored in ways where the descriptions may not be visible leading to an increased likelihood of having to search a greater number of pallets to locate the boxes containing the information.
28. With specific regards to the estimated time to search each pallet; the NRM has explained that each pallet would first have to be removed from the racking by using a forklift truck to lift it and transport it to office space. This has been estimated at approximately 15 minutes which the Commissioner would accept seems to be a reasonable amount of time in the circumstances.
29. The NRM has informed the Commissioner that the contents of the boxes on the pallets would have to be transferred to an office to allow for sufficient space for the qualified member of staff to be able to examine the content of the boxes. The process of examining the contents of the boxes has been estimated at 20 minutes. The NRM has also identified that several of the boxes are bound in plastic and the process of removing the plastic from the boxes in order to examine the contents could take between 5 and 10 minutes. The time taken to search each box has been based on a consideration of the size of the boxes (255mm x 400mm x 390mm) and the variable number of documents likely to be in each box.
30. The NRM have not conducted a sampling exercise due to the costs involved in sending a member of staff to Wroughton to do this and the Commissioner would accept in the circumstances that it is reasonable for the NRM to have provided an estimate without conducting a sampling exercise. Based on the figures provided by the NRM a whole pallet could be transferred to the office in 15 minutes and then each box on the pallet would require 20 minutes to search (assuming it was not bound in plastic). If the pallet contains 35 boxes this would take the time required to locate and retrieve information up to potentially over 10 hours if all the boxes on a pallet were to be searched. The NRM have factored in a search time of 7 hours which would be based on having to search approximately 20 boxes on one pallet to identify and retrieve the requested information.

31. The Commissioner is therefore minded to accept that a search time of 7 hours may be a conservative estimate as it is possible that boxes of different pallets may need to be retrieved and searched.
32. The NRM also considers the assistance of a second member of staff would be needed to operate the forklift truck and to assist with the moving of the boxes which is a two-person job. The NRM has estimated that a second person would be needed to assist for a minimum of 4 hours assuming they could be called back when required rather than having to stay with the other member of staff the whole time.
33. In total the Commissioner would accept it is reasonable for the NRM to estimate that 7 hours of staff time would be needed to locate and retrieve the information and 4 hours of additional staff time would be required to assist with this process.
34. In terms of the costs that the NRM has estimated would be a necessary part of the location and retrieval process; the Commissioner accepts that the cost of the train fares, taxi fares and overnight accommodation can be included in the estimate and in some cases are probably very conservative estimates, especially in the case of the overnight accommodation. Similarly the Commissioner recognises that if staff are entitled to claim a subsistence rate for being away overnight then this is a cost associated with the location and retrieval of the information and can be included in the estimate.
35. The NRM has also included the time spent overnight in the estimate and has calculated this as 10 hours at £25 per hour of staff time. The Commissioner is wary of accepting that this is a cost attributable to any of the activities described in the Fees Regulations. The Commissioner, as set out in the above paragraph, would accept that costs that attributable to staff during the time of the overnight stay such as a subsistence allowance and the accommodation can be considered, but it is not clear what costs the NRM would actually incur from a member of staff being out of the office overnight especially when considering the £25 per hour cost is based on the cost of the time staff spend working which is unlikely to include the time staff spend sleeping.
36. In light of the above, the Commissioner is minded to accept that even without including the 10 hour overnight stay costs of £25 per hour of staff time, the estimate provided by the NRM would exceed the cost limit and therefore the request was correctly refused under section 12 of the FOIA.
37. However, before concluding his investigation the Commissioner looked at the other possibilities for locating and retrieving the information which were put forward by both the complainant and the NRM. The first of

these options involved sending a member of staff from SMG's London offices to Wroughton rather than a member of staff from NRM's York offices. The Commissioner has considered this option as it would appear to reduce the estimated costs due to eliminating the need for an overnight stay and shortening the travelling time. Based on the same figures as before the estimate for complying with the request using staff based in SMG's London office had been estimated as follows:

Travel time 5hrs at £25/hr	= £125
Search time 7hrs at £25/hr	= £175
Assistance with search 4hrs at £25/hr	= £100
Rail fare	= £70
Taxi fare	= £40
Total	= £510

38. Although this estimate is significantly lower than the estimate provided based on using staff in NRM's York office, the cost calculated would still exceed the appropriate limit of £450. The NRM have also raised concerns that staff at SMG may not be best placed to conduct the necessary searches as they may not be as aware of what to look for or be appropriately trained. In any event, the Commissioner would accept this estimate to be reasonable and that it would exceed the appropriate limit.
39. One final option was considered by the NRM; that of having the relevant pallets and boxes transported from Wroughton to the NRM's offices in York to conduct the search there. The NRM looked into a number of ways of doing this, principally using the SMG's own van and drivers. The NRM has explained that at the time of the request it requested a quote for using the SMG's van and drivers to transport the pallets back to York. The use of the SMG van would require the use of 2 people taking an 8 hour round trip which would then also involve an overnight stay.
40. The Commissioner accepts that the search time of 7 hours would still be applicable regardless of the location in which the boxes were searched so there is an initial cost estimate of £175 without factoring in the costs and time associated with the van use in this case. Assuming that the 8 hour round trip involving two people was also included in the estimate by factoring in the costs calculated as £25 per hour of staff time, the Commissioner would accept that this option would also exceed the cost limit.
41. The NRM also considered whether couriating the pallets with other items would reduce the cost but had to take into account the fact that any other items that would need transporting would be likely to be from the national collection and therefore require a risk assessment to ensure no damage would come to other objects being transported. The NRM did

not therefore consider this to be a viable way of reducing costs as the number and size of the pallets that would need to be transported would leave little to no room for other items to be couriered safely. Similarly the use of an outside courier would raise concerns as to the security of the information being transported as the NRM has already explained that some of the information in the boxes may be Human Resources documentation.

42. Finally the NRM looked at the possibility of hiring a van externally but using NRM staff to drive to Wroughton and locate and retrieve the information. Much as with the other options considered by the NRM after accounting for the staff time to search the relevant boxes and pallets and the staff time and costs associated with the round trip to Wroughton, even without considering the time needed to assist with the searches and any associated costs, the Commissioner would accept that this option would also exceed the appropriate cost limit.
43. In conclusion, the Commissioner accepts that the NRM has thoroughly considered not just the simplest option of searching, locating and retrieving the relevant information but also all other sensible options for responding to the request. Based on the information provided he therefore accepts that the NRM is not able to comply with this request without exceeding the cost limit and the NMR has correctly applied section 12 of the FOIA.

Other matters

44. Although the Commissioner has accepted in this case that the cost of complying with the request would exceed the appropriate limit of £450, he is also aware that by accepting this that it does suggest that information archived in deep storage some distance from the offices of a public authority may always be difficult to retrieve without exceeding the cost limit.
45. However, the SMG has confirmed that there is now an electronic cataloguing system in place for information which has been sent to storage more recently and this will reduce the search time and therefore the cost estimates in the future. In addition to this the hangers at Wroughton are open to the public who can view information in situ.
46. The Commissioner always considers each request on its own merits and his acceptance of the applicability of section 12 in this case is not intended to provide a "blanket" for the SMG to refuse all future requests for information stored at Wroughton on this basis.

Right of appeal

47. 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

48. 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.
49. 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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