

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2016

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

Decision (including any steps ordered)

1. The complainant requested from the Education Funding Agency ("EFA"), an executive agency of the Department for Education ("DfE"), information about the redevelopment of Chagford Primary School. The EFA applied section 12 of FOIA to the request.
2. The Commissioner's decision is that the public authority has:
 - complied with section 1 as it reasonably interpreted the scope of the complainant's request;
 - breached section 10(1) as it did not respond to the complainant's request promptly;
 - correctly applied section 12 to the complainant's request; and
 - breached section 16 as it did not provide reasonable advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any steps in relation to its breach of section 16 as the complainant has subsequently submitted a new request to which it did not apply section 12.
4. As an executive agency of the DfE, the EFA does not constitute a public authority for the purposes of FOIA and so this notice is issued to its parent Department, the DfE.

Request and response

5. The complainant made three separate sets of requests for information to the EFA in connection with the refurbishment or rebuilding of Chagford Primary School. The first one was made on 7 May 2015, the second on 3 June 2015 and the third on 24 June 2015. The EFA applied section 12 to each of these requests. The complainant's complaint concerns the EFA's handling of his request of 24 June 2015.
6. On 24 June 2015 the complainant requested the following information from the EFA under FOIA:

"Request 1

A copy of the Feasibility Study for Chagford Primary School.

Request 2

In the event that the cumulative time and cost of Request 1 and Request 2 is below the cost threshold, a copy of any document which sets out the terms of reference and parameters for the Feasibility Study.

Request 3

In the event that the cumulative time and cost of Request 1, Request 2 and Request 3 is below the cost threshold, any correspondence or documents created from 1 June 2014 to an "end date" of 23 June 2015 including, but not limited to:

- a. meeting notes*
- b. emails*
- c. letters*
- d. reports*
- e. notes of phone conversations*

between the EFA and "defined persons" in which the question of whether Chagford Primary School should be refurbished or rebuilt is discussed. For the purposes of this request, a "defined person" is any third party who is neither an employee of the EFA nor a private individual acting in their capacity as such (for example, other local residents or parents). To be clear, I do not wish to see correspondence with other parents and residents.

In the event that the cost limit will be exceeded in relation to this request plus Request 1 and Request 2, this request shall be that information be provided up to that limit starting with the oldest information in the period first and that the request be treated as having an "end date" for information of the date up to which information may be provided within the limit.

Request 4

In the event that the cumulative time and cost of Request 1, Request 2, Request 3 and Request 4 is below the cost threshold, any correspondence or documents created from 1 June 2014 to an "end date" of 23 June 2015 including, but not limited to:

- a. meeting notes*
- b. emails*
- c. letters*
- d. reports*
- e. notes of phone conversations*

sent internally within the EFA in which the question of whether Chagford Primary School should be refurbished or rebuilt is discussed. In the event that the cost limit will be exceeded in relation to this request plus Request 1, Request 2 and Request 3, this request shall be that information be provided up to that limit starting with the oldest information in the period first and that the request be treated as having an "end date" for information of the date up to which information may be provided within the limit."

7. The EFA responded on 21 July 2015. In relation to Request 1, it confirmed that the feasibility study would be completed shortly and would be made available to the complainant. As regards Request 2, it provided a link to the feasibility study template which set out the parameters of the study. In relation to Requests 3 and 4, it applied section 12 on the basis that it had estimated that the cost of complying with the requests would exceed the costs threshold.
8. The complainant requested an internal review on 23 July 2015 and EFA provided the outcome of its internal review on 21 August 2015. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 23 July 2015 to complain about the way his request for information had been handled. The Commissioner considered the complaint following the completion of the internal review on 21 August 2015.
10. The complainant specifically complained about the interpretation of his request, the application of section 12, whether appropriate advice and assistance had been provided under section 16 and whether a response had been provided “promptly” under section 10(1).
11. The Commissioner considered whether the EFA handled the request in accordance with FOIA. He specifically considered:
 - (i) whether the EFA interpreted the scope of Requests 3 and 4 of the complainant’s request correctly in accordance with section 1;
 - (ii) whether the EFA responded to the complainant’s request promptly as required by section 10(1);
 - (iii) whether the EFA was entitled to rely on section 12 as a basis for refusing to provide the information requested in Requests 3 and 4; and
 - (iv) whether the EFA, having applied section 12 to Requests 3 and 4, provided appropriate advice and assistance in accordance with section 16.

Reasons for decision

Section 1 – Interpretation of the scope of the request

12. The Commissioner initially considered whether the EFA had correctly interpreted the scope of Requests 3 and 4 made by the complainant.
13. The complainant noted that the EFA, in considering the application of section 12, referred to the need to extract paragraphs relevant to his request from documents which had been identified as falling within the scope of Requests 3 and 4. He argued that these requests were not for extracts of documents but for the entirety of documents in which the question of the refurbishment or rebuilding of Chagford Primary School was discussed. Consequently, he believed that the EFA did not need to consider extracting relevant information from these documents in order to comply with his request but simply consider whether to provide him with the complete documents.

14. The complainant pointed to the wording of his request as being for *"...any correspondence or documents created from 1 June 2014 to an "end date" of 23 June 2015 ...in which the question of whether Chagford Primary School should be refurbished or rebuilt is discussed."* He explained out that at no point in his request did he refer to a desire to only receive extracts of any relevant documents.
15. The complainant also noted that the initial response to his request was provided by a senior member of staff at the EFA and that the internal review was carried out by an independent panel, with the response again being signed by a senior member of staff. Given this, he indicated that he found it difficult to believe that none of the people involved appreciated that he was not requesting extracts of the documents dealing with the refurbishment or rebuilding of the school but the documents in their entirety. Allied to this, he questioned whether it was credible that no one at the EFA managed to read his request as it was actually written such that, at the very least, if there was any confusion, they did not think to contact him to ask whether he wanted extracts or the whole of any relevant documents.
16. The EFA noted the complainant's view that it had misinterpreted his request and that he believed that it should have been interpreted as for the entirety of the documents in scope, not extracts from these documents. However, it explained that in taking the request forward, it considered the complainant's request as for all references to *"the question of whether Chagford Primary School should be refurbished or rebuilt is discussed"*.
17. The EFA noted that FOIA allows requesters to request "information", and specifies that this means "information recorded in any form" (section 84). The Act also specifies that a valid request for information must "describe" the information requested (section 8(1)). It recognised that the Act enables any person to request specific information but it believed that this did not amount to a fishing expedition which could be launched on the vaguest of search terms. It noted that section 8(c) says that a valid request is one which 'describes the information requested'. It believed that the terms that the complainant used, *"the question of whether Chagford Primary School should be refurbished or rebuilt"*, were the descriptor for the purposes of section 8.
18. The EFA also argued that such an interpretation was correct in this case as the question was about a very specific matter i.e. whether the school should be refurbished or rebuilt. It went on to state that the documentation that would refer to whether Chagford Primary School should be refurbished or rebuilt, such as minutes of meetings, would also cover a very wide range of other matters, for example, the school's education vision and brief, the capacity of the new school, the nursery

facilities on site, the ownership of the land, the appointment of advisers and survey companies, the appointment of a building contractor and the timing for the building works. The EFA therefore believed that it seemed logical for it to assume that the complainant was only interested in the specific matter he described.

19. The EFA went on to explain that, in accordance with its general duty under section 16, it always looked hard at requests to construe them as valid requests if possible. Consequently, if people asked for "letters" or "emails" it would not reject this as an invalid request for documents. Rather, it would treat it as a request for information contained in the letters or emails (and not in any other recorded form), thus limiting the description of information being requested in a helpful way.
20. The EFA stated that it responded to the complainant in good faith. It said that it did not routinely interpret a description of information as a keyword search. The EFA explained that had it interpreted his request as being for all documents containing these keywords, the likelihood is that it would have responded citing section 14 on the grounds of burden because a year's worth of documents containing at some point a reference to the debate over refurbishment or rebuild would run to hundreds of documents. The burden of responding to such a request would arise because:
 - (i) it had a core team of people working on the design and build project to address the significant condition need at Chagford Primary School and such a request would require searches to be undertaken by all members of the team. The core team consists of a Project Director, Project Manager, Design Adviser and ICT Adviser. The central team, including the Programme Director and other members of the leadership team, would also need to undertake searches and, in addition, the external Technical and Legal Advisers and the survey companies;
 - (ii) the documentation would include email, letters, reports, etc; and
 - (iii) officials would be required to read all the information and apply exemptions to any sensitive information.
21. The EFA noted that the complainant had stated that he found it difficult to believe that none of the officials involved in responding to his request, and associated internal review, appreciated that he wanted documents in their entirety and that he also questioned why, if there was any confusion regarding the interpretation of his request, officials did not contact him directly for clarification. The EFA believed that this was dealt with by the points made above. It did not feel that there was

any confusion regarding the request as it believed that it had understood its scope and responded accordingly.

22. In response to the EFA's arguments, the complainant informed the Commissioner that, whilst ultimately he was only interested in the discussion of whether or not the school should be refurbished, he believed that a complete document was significantly different to an extract. He argued that, whilst a full document might contain extraneous material and in many cases it might be possible to treat the discussion on a particular subject as a discrete matter such that other material might be excluded, there would also be many cases where the full document was required to properly understand the context and background to that extract. He also contended that the extraction of material from a document required a subjective view or guess as to whether or not the material extracted was what had been requested.
23. The complainant pointed out that the Commissioner's guidance notes, *Recognising a request made under the FOIA*, made it clear from paragraph 50 onwards that when a person requested a document, that request should, in the absence of any restricting criteria from the applicant, be for the entire document not some edited version of it. In particular, he argued that the example at paragraph 65 showed that an even broader request than he had made would be valid and would require all emails (not edited versions of them). He stated that he could not find anything in the guidance notes which would support the EFA's position of taking a request for a document as a request for an extract of that document. In his view, the guidance seemed to confirm that a request for a document should be requested as a request for the whole document.
24. The Commissioner notes that the ICO's guidance, *Recognising a request under the Freedom of Information Act (Section 8)*, referred to by the complainant, addresses the issue of what might constitute a valid request for the purposes of FOIA. It makes clear that, under section 8(c), a request can only be a valid if it describes the information requested. It then proceeds to consider what might constitute an adequate description, given that requesters are unlikely to know exactly what information is held or how records are stored.
25. In this case, the Commissioner believes that the complainant has clearly made a valid request as he has provided an adequate description of the information, by reference to the rebuilding or refurbishment of Chagford Primary School, so as to allow the EFA to identify that information. The only issue is whether the EFA should have interpreted the request more broadly than it did so as to include the entirety of any documents which included references to the rebuilding or refurbishment of the school.

26. In cases where the interpretation of a request is in dispute, the Commissioner has to consider whether the public authority's interpretation of the request was an objective reading of that request.
27. The Commissioner is of the view that it is probably not unusual for public authorities to receive requests which are similar in nature to the one made by the complainant, that is requesting documents which relate to a particular subject matter. However, in most cases, the requesters are likely only to be seeking to obtain information about the subject matter that they have specifically identified, not a range of other matters which may not even be linked to that subject. When such requests are made, in the absence of a clear statement in the request or inferences that can be drawn from the context and background to the request that the requester wishes to receive the entirety of any relevant documents, not just the parts that relate to the subject matter that they have identified, the Commissioner would regard it as reasonable for a public authority to consider the request to be for the parts of the documents that concern the subject matter that has been identified in the request.
28. In this case, the Commissioner is not satisfied that the request provides the EFA with a sufficiently clear statement that the complainant was seeking to obtain the entirety of any documents which mentioned the refurbishment or rebuilding of the school. The Commissioner also notes that the complainant's correspondence with the EFA prior to his request of 24 June 2015 appears to be focussed on the issue of the rebuilding or refurbishment of the school. He therefore does not believe that there is anything in the context or background to the request which should have alerted the EFA to possibility that the complainant was not only seeking information on the refurbishment or rebuilding of the school but also on a range of other matters which might have been only slightly related or totally unrelated to that issue. In these circumstances, the Commissioner believes that it was reasonable for the EFA to have interpreted the complainant's request as being for information falling within the subject matter he had identified, the refurbishment or rebuilding of the school, and that this was an objective reading of the request.

Section 10 – Time for compliance with the request

29. Section 1 of FOIA states that any person making a request for information is entitled to be informed by a public authority whether it holds the information and, if so, to have that information communicated to him, subject to the application of any relevant exemption. Section 10(1) of FOIA provides that this must be done *"...promptly and in any event not later than the twentieth working day following the date of receipt."*

30. The complainant informed the Commissioner that he did not believe that the EFA had complied with section 10 as, whilst it had responded within 20 working days, it had not responded "promptly". The complainant explained that the EFA had already received two requests from him, on 7 May and 3 June 2015, for similar information to the information he requested on 24 June 2015 and that, in both cases, it had applied section 12. In light of this, he did not believe that it should have taken 20 working days to provide him with a response to his request of 24 June 2015.
31. The EFA explained that it recognised that the complainant, and other requesters, would prefer a response with as little delay within the statutory deadline as possible, but that the team handling his request was extremely busy. It informed the Commissioner that its core work was delivering school buildings and inevitably it had to balance individual pieces of correspondence amongst its other workload. It confirmed that it believed that it had responded appropriately and in due time to the complainant's requests within the context of the workload of the wider Priority School Building Programme ("PSBP").
32. The EFA informed the Commissioner about the work that needed to be done before it was in a position to provide a response to the request on 24 June 2015. It explained that all members of the PSBP team that had been engaged on the project needed to search their emails for correspondence containing discussions on refurbishment or rebuilding. This included the core team consisting of a Project Director, Project Manager, Design Adviser and ICT Adviser, the central team, including the Programme Director and other members of the leadership team, the external Technical and Legal Advisers and the survey companies. It went on to explain that the project files would need to be searched for reports, letters, etc containing discussion on refurbishment or rebuilding.
33. The EFA provided the Commissioner with details of work being undertaken at the time of the request in relation to responding to the complainant's previous requests. It explained that the complainant had started to his correspondence in October 2014. He had written to the Chief Executive of the EFA, to the Deputy Director for the PSBP and to the Deputy Director who had considered his complaints. It detailed a number of pieces of correspondence that it had received from the complainant in May and June 2015.
34. The Commissioner was informed by the EFA that the request under consideration was responded to by the core project team working on the Chagford Primary School design and build project, the PSBP Communications and Correspondence Manager and the PSBP Programme Director. It explained that the school was grouped with

seven other schools to form the PSBP Devon Batch and in June 2015 the team was heavily occupied with the development of designs, costs, programme schedules, etc. for all schemes. Any delays incurred to the delivery of the design and build projects would have resulted in a cost to the public purse as when projects are delayed inflationary costs are incurred.

35. The EFA went on to explain that approximately 20% of the PSBP Communications and Correspondence Manager's time was identified to deal with a range of correspondence, including requests under FOIA. They were also responsible for supporting public consultation events, organising turf cutting and school opening ceremonies, maintaining the PSBP website pages, providing briefings and updates and the programme, etc. The EFA advised the Commissioner that during the period concerned, the PSBP Communications and Correspondence Manager had 5 other FOI requests to process.
36. The Commissioner was informed by the EFA that the PSBP Programme Director oversees the delivery of 214 schools. All projects were in a phase of delivery and issues were escalated for consideration. During the period concerned: 4 feasibility studies were submitted and approved; 5 contractors were appointed to design and build projects; 13 design and build contracts were signed; and a further 11 design and build contracts were being finalised for signature in August 2015. The EFA explained that June, July and August 2015 was a particularly busy period for the PSBP team as they were seeking to get contractors onto site so they could take advantage of the school summer holidays. In addition the PSBP team were engaged on the Spending Review bid, preparation of the Major Programme Quarterly Return to Cabinet Office and the preparation to evaluate the bids for schools seeking to be included in the second phase of the PSBP.
37. In relation to the complainant's argument that he had made two previous requests which were similar in nature to his request of 24 June 2015 and, consequently, that it should not have taken very much time for the EFA to determine how to respond to this request, it commented that for each request received policy colleagues had sought specialist FOI advice from the DfE and that each request had been thoroughly investigated to determine if it fell within the cost threshold.
38. The Commissioner acknowledges that the team that was tasked with responding to the complainant's request appears to have been under significant pressure of work at the time that it was received and so this would inevitably have created difficulties for it. However, he notes the significant similarities between the request of 24 June 2015 and the complainant's two previous requests, which were both also refused on the basis of section 12. Consequently, the Commissioner is of the view

that the processes that the EFA would have needed to follow and the factors that it would have needed to take into account would have been very similar for each request. In light of this, he is not persuaded that it should have taken until 21 July 2015 for the EFA to determine that section 12 was also applicable to the request of 24 June 2015. He is therefore not satisfied that it replied promptly to the complainant's request and so he has determined that it breached section 10(1).

Section 12 – Cost of compliance exceeds the appropriate limit

39. Section 12(1) of FOIA states 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."

40. Section 12(3) states 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."

41. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £600 for central government departments. Under the Fees Regulations, public authorities are required to cost their spending on the relevant activities at £25 per person per hour. Consequently, the appropriate limit would only be exceeded if a government department estimated that it would take longer than 24 hours to carry out the relevant activities in order to comply with a request.

42. Under regulation 4(3) of the Fees Regulations, a public authority may, for the purposes of estimating the cost of complying with a request, only take account of 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.

43. The EFA provided the Commissioner with an explanation of the reasons why it believed that compliance with the request would exceed the appropriate limit.

44. The complainant argued that as the relevant information would be likely to be held electronically, a simple search using the word “refurbishment” would eliminate all the documents outside the scope of his request. He believed that this would then leave a fairly small number to review manually. Whilst he accepted that there may be a need to search email accounts individually, he contended that there could only be a small number of individuals involved in the project at the EFA.
45. In its internal review response, the EFA acknowledged that it might be quite quick to find which documents contained the word “refurbishment”. However, the thresholds of time and cost also related, as the complainant had noted, to the manual search of the documents thereafter to locate and extract the information requested.
46. It went on to provide the following explanation about the documents that it held that fell within the scope of the request:
 - a) Meeting Notes - There had been regular, usually weekly, meetings with the school and also meetings with other stakeholders over the last 10 months from which paragraphs relevant to the request would need to be extracted. This part of the request alone would be over the threshold of time and cost.
 - b) Emails - There were over 2,600 emails relating to Chagford Primary School in the email accounts of the Project Director and Project Manager for the Chagford Primary School PSBP project. The email accounts of senior management in the PSBP and advisers to the project would also need to be searched. Therefore, retrieving and searching each record involved, even after reducing numbers using the search term the complainant had suggested, would exceed the threshold.
 - c) Letters - There were a small number of letters relating to Chagford Primary School. To retrieve and search these documents would not exceed the threshold if any were found to come from a “defined person” under the criteria the complainant had requested (i.e. any third party who was not a local resident or parent engaging in a private capacity).
 - d) Reports - There were a small number of reports, which would need to be retrieved and searched. Survey reports on the current school buildings and site would not be included as they comment only on current conditions and do not discuss options of refurbishment or rebuilding.
 - e) Telephone Conversations - Formal records of telephone calls were not kept. Telephone calls could be daily or more frequent on

a project of this nature. If the content of a telephone call needed to be recorded this would be done in an email.

47. As regards the number of emails, files and documents estimated to fall within the scope of the request, the EFA explained that it arrived at these figures by contacting all staff working on the Chagford School Project and asking them to search their online email, their email archives and their project filing system using the words 'refurb' (which would also capture 'refurbishment', 'refurbished', etc), 'build' (to capture 'new build', 'rebuild', etc), and 'built' (to capture 'rebuilt', etc). The responses from each member of staff were then collated to arrive at the figures for its cost estimate.
48. The EFA originally estimated that there were 3,508 items to be searched. However, it subsequently acknowledged that it had erroneously double counted the number of files and documents in its original estimate. The original estimate included 423 files and 423 documents to be searched. The EFA confirmed that it should only have included 423 documents in the estimate. This therefore reduced its estimate of items to be searched to 3,085.
49. The EFA went on to argue that the 3,085 items that it had identified would still need to be read through manually to identify information that had been requested, as they were also likely to contain much information outside the scope of the request. For example, emails and documents identified by the search would also include the school's vision, the programme of work, the surveys needed and when these could be undertaken and health and safety implications. The EFA suggested that any discussion of refurbishment or rebuild options would form just a part of the discussion. Consequently, it was of the view that all of the emails and documents identified would need to be read through to identify the information which had been requested.
50. The EFA estimated that it would take on average 2 minutes to identify and locate the information in the 3085 items identified, 3 minutes to retrieve the information from emails and documents and 3 minutes to extract the relevant information from the retrieved emails and documents. However, it went on to argue that, given the large number of emails and documents returned by its search, it would only need to spend an average of 30 seconds per document undertaking any or all of the permitted activities combined to exceed the cost threshold. It explained that each of the items needed to be read through as they might contain some information in scope of the request and some which fell outside that. It therefore believed that a simple read-through of the relevant items alone would exceed the cost threshold.

51. In addition to identifying and reading through relevant emails and documents, the EFA argued that it would need to cut and paste the information identified (with possible multiple references in any one document) into a new document, add relevant information necessary to identify, e.g. the type, name and date of the original document, from which the information was extracted, and save the new document with a relevant file name. It therefore maintained its position that section 12 was applicable to the request.
52. The complainant argued that only those documents containing the word (or part word) "refurb" were required to be considered because if that word was missing the people involved were clearly not discussing the merit or otherwise of a refurbishment as compared to a new building. He has pointed to the fact that if the search undertaken was for "refurb" or "build" there would be a vast number of documents because virtually every document would include the word/part word "build". However, he believed that if the search were limited to "refurb" this would result in a much smaller number of documents being located and, consequently, that the appropriate limit would not be exceeded.
53. The EFA informed the Commissioner that it believed that the complainant was mistaken in his assertion that a search limited to the term "refurb" would have been adequate to reasonably identify all information in scope of his request. It believed that this raised points of principle about the way that public authorities should treat requesters and the requests that they made.
54. The EFA explained that, firstly, it was not for public authorities to decide which part of a request to search for and to unilaterally decide to avoid part of a request. Such practice would potentially be open to abuse as public authorities could manipulate search terms to their own advantage.
55. It pointed to section 1 of the FOI Act which sets out the right of access to information and states:

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him;
56. Section 8 of the Act makes clear that the request, made in writing, must describe the information sought. It states:

(1) In this Act any reference to a "request for information" is a reference to such a request which—

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

57. The EFA explained that there is no suggestion that a request can be refined or modified in any way by a public authority other than through the process of clarification or the agreed narrowing of a request for cost threshold purposes – even then the scope of a request must be as set by the requester. A public authority could not unilaterally decide to cherry-pick a request in order to bring it under the cost threshold.

58. The EFA noted that the ICO's guidance to public authorities also made clear that public authorities must properly identify all the information specifically requested:

"First, read the request carefully and make sure you know what is being asked for. You must not simply give the requester information you think may be helpful; you must consider all the information that falls within the scope of the request, so identify this first."

59. It went on to note that the ICO's detailed guidance on determining whether information is held also makes plain that the Commissioner will take a view about the thoroughness of a public authority's search for information in determining whether information is held.

60. The EFA argued that it was clearly, therefore, for a requester to specify the information that they wanted to see and for a public authority to deal with a request as set out. It explained that in the complainant's case, it concentrated the search terms based on the phrasing of his request, *"whether Chagford Primary School should be refurbished or rebuilt"*.

61. The Commissioner was informed by the EFA that, furthermore, if it had done as the complainant had suggested, it is likely that it would potentially have missed some emails in scope of his request. It believed that it was entirely probable that some emails might only refer to the feasibility of 'rebuild', but still be relevant to the question of the 'refurbishment or rebuild' option and so be in scope of his request. It argued that there might, for example, be emails talking about 'rebuild or other options', which would be relevant. If the search was limited to the one keyword 'refurb', these would not be picked up.

62. The EFA explained that since there is no provision in the Act itself, the s45 Code of Practice or ICO good practice guidance for a public authority to amend, narrow or alter a request for information from that described by the requester, it believed that it treated the complainant's description of the information that he required entirely properly, and that there were no grounds to amending the search terms as he has since suggested.
63. As regards the issue of the scope of the searches undertaken by the EFA, the Commissioner accepts its point that it would not have been appropriate to carry out a search as suggested by the complainant, only under the search term "refurb". The Commissioner is of the view that there might well have been documents or emails falling within the scope of the complainant's request which would not have been identified by searching solely under the term "refurb". For example, there could have been documents or emails which only referred to rebuilding the school but were relevant to the issue of deciding whether the school should be refurbished or rebuilt. Such documents would have been caught by searching against the words "build" or "built". Consequently, the Commissioner accepts that the EFA needed to search under the terms it used to try to identify relevant documents falling within the scope of the complainant's request.
64. Having undertaken its searches, the EFA informed the Commissioner that it had identified 3,085 emails and documents that would need to be searched to try to identify information falling within the scope of the request. As the EFA has pointed out, it would only require it to spend 30 seconds per item carrying out the activities permitted when applying section 12, that is determining whether it holds the information, locating and retrieving documents containing the information and extracting the relevant information, for the appropriate limit, which equates to 21 hours of carrying out those activities, to be exceeded.
65. The Commissioner has reviewed a small sample of emails and documents which potentially contain information falling within the scope of the request. He is satisfied that it is likely to take on average more than 30 seconds per item to determine whether those items held information falling within the scope of the request and, where they did, to extract that relevant information. The Commissioner is therefore of the view that it was reasonable for the EFA to estimate that responding to the request would have exceeded the appropriate limit. He has consequently decided that it has correctly applied section 12 to the request.

Section 16 - Advice and assistance

66. Section 16 states that a public authority should provide advice and assistance so far as it would be reasonable to expect the authority to do so, to a person who has made a request. A public authority will be deemed to have complied with this duty if it has provided advice and assistance in line with that set out in the code of practice on how public authorities are expected to discharge their functions under FOIA. This code is produced under section 45 of FOIA.
67. Under paragraph 14 of the code of practice, where a request is refused on cost grounds, the public authority should consider what, if any, information could be provided within the cost ceiling. There is also reference to advising the applicant to refine or reform their request.
68. The Commissioner interprets the code of practice to mean that in order to satisfy the duty to provide advice and assistance a public authority should:
- either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit; and
 - provide advice and assistance to enable the requestor to make a refined request.
69. The Commissioner noted that in its refusal notice dated 21 July 2015, the EFA informed the complainant that section 12 was applicable to his request. It went on to state that:

"However, if you were to make a new request for a narrower category of information or limit the scope of your request, we may be able to comply with your request within the cost limit, although I cannot guarantee that this will be the case.

The EFA does hold meeting notes, emails, letters and reports between the EFA and third parties in which the question of whether Chagford Primary School should be refurbished or rebuilt is discussed. We do not record notes of all phone conversations, given that communication on a project such as this can be daily occurrence. We hold reports in an online shared folder system. While it could be more straightforward to review reports stored in our system, due to the nature of the request submitted and the timeframe indicated; reviewing emails would be a very time consuming process.

On the basis of the information above you may wish to redefine both the range of documents you are requesting and the time period covered by your request."

70. The Commissioner asked the EFA to explain why it believed that, from its responses to the complainant, he had received sufficient information to be able to narrow the scope of his request, in terms of the types of information to be requested and the time period to be covered by the request, so as to potentially avoid exceeding the appropriate limit.
71. The EFA noted that the complainant did follow its suggestion to narrow the time frame in scope of the request, and that this was dealt with within the appropriate limit, so it considered that this advice did provide him with sufficient information to enable him to narrow his request.
72. Furthermore, the EFA informed the Commissioner that whilst it did suggest reducing the timescale in scope of the request, as the complainant subsequently did, it did not simply limit its advice to this point. Instead, it explained that either Request 3 or 4 taken individually would still exceed the cost threshold, due to the amount of work required to retrieve and identify the relevant information.
73. The EFA stated that it recognised that the complainant was interested in specific categories of information. It explained that it had made clear to the complainant which subsections of Requests 3 and 4 were problematic because of high volumes, which had lower volumes and were potentially manageable should he indicate that he wished it to take forward that element. For example, it informed him where there was no separate information held with a subsection of the request i.e. that it did not keep formal records of telephone calls, which could be daily or more frequent on a project of this nature. If the content of a telephone call needed to be recorded this would have been done in an email, one of the other sub-section categories.
74. In addition, the Commissioner was informed by the EFA that it explained to the complainant how reports were held, that it would be more straightforward to search reports because of the way in which they were held, and that the most time-consuming category of information identified by him would be searches of emails.
75. The EFA considered that not only did the complainant self-evidently successfully narrow his request following its advice, but that it provided him with tailored information based on the categories that he had identified in his original request to provide him with options in deciding how to narrow that further. In effect, without knowing which items would be priorities for the complainant, it tailored its advice to him to enable him to make an informed choice.

76. The Commissioner notes the points made by the EFA, however he is not convinced that the EFA's response to the complainant, subsequent to it applying section 12 to his request, provided him with a sufficiently clear indication as to what information could be provided within the appropriate limit, either in terms of the types of information that he could request or the time frame for which he might request information.
77. In light of the above the Commissioner is not satisfied that the EFA provided reasonable advice and assistance to the complainant and that it therefore breached section 16. However, the Commissioner notes that the complainant subsequently made a request within the appropriate limit, to which the EFA provided a response. He therefore does not require the EFA to take any further steps to ensure compliance with section 16 of the Act.

Right of appeal

78. 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

79. 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.

80. 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

Rachael Cragg
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