

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 September 2016

**Public Authority:** The Governing Body of the University of Sussex

**Address:** Sussex House

Falmer

Brighton

BN1 9RH

### Decision (including any steps ordered)

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1. The complainant requested from the University of Sussex ("the University") information about international students and staff at the University. The University applied section 12 to the request.
2. The Commissioner's decision is that the University has correctly applied section 12 to the complainant's request. She therefore does not require the University to take any further steps to ensure compliance with the Act.

### Request and response

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3. On 16 April 2016 the complainant requested the following information from the University under FOIA:

*"Under the Freedom of Information (FOI) Act 2000, please provide me with information between 2000 and 2016, please can you provide me a well broken statistic in figure in hundredth, tenths and unit (not in fraction or percentage) on the following question:*

*1. What is the admission rate Home Students and Non international students that identify as Black Asian and Minority Ethnic there at University of Sussex?*

*2. What is the retention and attainment rate of these students?*

3. *How many of students have be withdrawn for visa purposes?*
4. *How many of students have be withdrawn for fees purposes?*
5. *How many academic and non academic staffs identify as Black Asian and Minority Ethnic there at University of Sussex?*
6. *What is the retention and attainment rate of these BAME staffs on yearly basis?*
7. *What the figures of BAME staffs are on Zero hour, Fixed Term or Permanent contract?*
- B. *How diverse are the 4 core reading materials in weekly syllabuses and representative of the BAME Students experiences and background?*
9. *How are these 4 core reading material selected?*
10. *Has any students or academic staffs complained about lack of diversity in the journal or essay archive resources where the 4 core reading material are sourced?*
11. *How many BAME students has lodged complaints about being marked down?*
12. *Is there any independent avenue to rigorously check if these allegations where true?*
13. *How many students have to be withdrawn on the basis of PREVENT strategy and Non EU International Students recruitment license?*
14. *How many BAME staffs member have been reported on the basis of PREVENT strategy to the Home Office?*
15. *Are there any avenue provided by University of Sussex management where Non EU International students to speak out on whether they feel safe on the university campus on PREVENT strategy and Non EU International Students recruitment license affect their lives on campus?*
16. *How many BAME academic and non academic staffs has Sussex promoted between 2000 and 2016*
17. *How many BAME academic staff has Sussex conferred Professorial?*

*18. In terms of mandatory school fees financial obligation of Non EU International Students towards the university, how much of this university's income from Non EU International students fees translate into Sussex obligation to funding representation and protections of the rights of the Non EU International students within the student union body like the subvention the university pay to fund the USSU?*

*19. How much subvention the Sussex pays to the union yearly?"*

4. The University responded on 22 April 2016 and applied section 12 to the request.
5. The complainant requested an internal review. The University provided the outcome of the internal review on 19 May 2016 in which it maintained its original position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 22 May 2016 to complain about the way his request for information had been handled. He specifically complained about the University's application of section 12 to his request.
7. The Commissioner considered whether the University had correctly applied section 12 to the complainant's request.

### **Reasons for decision**

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#### **Section 12 – Cost of compliance exceeds the appropriate limit**

8. The University has argued that section 12 applies to the complainant's request.
9. 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."*

10. 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 £450 for

universities. Under the Fees Regulations, a public authority is 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 university estimated that it would take longer than 18 hours to carry out the relevant activities in order to comply with a request.

11. 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.
12. The University provided the Commissioner with a detailed explanation of the estimate of the time/cost required to provide the information in relation to the 19 questions from the complainant. It confirmed that this estimate had been compiled from information provided by the relevant departments of the University who held the information requested. It informed the Commissioner that the total estimated time to collate the information required to answer all 19 of the complainant's questions was at least 229 hours.
13. The detailed explanation sent to the Commissioner by the University provided comments by the relevant departments in terms of the processes involved in retrieving the requested information. For example, in relation to question 3 of the request, for details of how many of the relevant students had been withdrawn for visa purposes, it informed the Commissioner that this estimate had been provided by the Academic Registry. It explained that the University did not systematically record this information and that, instead, it would be categorised as "Other purposes" in its records. To provide the information, it would need to manually check each "Other purpose" record and create a new document of the information. It went on to explain that it held approximately 50 "Other purpose" records per year and that it would take 5 minutes to check each record. As the request was for records over a period of 16 years, it would therefore take over 60 hours to complete this task. The Commissioner notes that, even if it took on average only 1.5 minutes to check each record, the time required to respond to this one question would still exceed the appropriate limit.
14. The Commissioner was informed by the University that no sampling exercises had been undertaken by the departments in order to determine the estimate but that their previous experience with collating information of this nature for similar requests had enabled them to estimate how long it would have taken them. It confirmed that previous

requests of a similar nature had included either individual questions or individual elements of questions, such as more limited date parameters.

15. The University confirmed that its estimate of time required to respond to the request was based on the quickest method of gathering the requested information as, for many of the questions, the data would be retrieved from existing data bases such as its student record system. However, it explained that some of the information requested pre-dated its current database systems and this would require either an interrogation of a historic database or reference to hard copy files in order to compile the requested information.
16. The complainant challenged the University's application of section 12 to his request. He indicated that he believed that the University was deliberately creating barriers so as not to provide the information he had requested. He also explained to the Commissioner why he considered that there was a significant public interest in the disclosure of this information.
17. The Commissioner notes that she is not able to consider public interest factors in determining whether section 12 has been correctly applied. She is only able to consider whether the University's estimate of the cost of complying with the request appears to be reasonable and whether it would exceed the appropriate limit.
18. The Commissioner has reviewed the detailed explanations provided by the University of the processes that it would need to follow to respond to the different parts of the request and the amount of time that this would take. She is satisfied that it is likely to take well in excess of 18 hours to respond to the different parts of the request. She is therefore of the view that it was reasonable for the University to estimate that responding to the request would have exceeded the appropriate limit and she has consequently decided that it has correctly applied section 12 to the request.

### **Section 16 - Advice and assistance**

19. 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.
20. 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.

21. In relation to its duty to provide advice and assistance under section 16, the University explained that in its first response letter to the complainant, having applied section 12, it had stated that:

*"If you choose to rephrase your request it may be possible to accommodate it. You may contact me at the above address, for further advice on your request."*

22. The University informed the Commissioner that the complainant did not choose to either rephrase his request or to contact the Information Officer for guidance on what information it might have been able to provide within the s.12 time limit.

23. The University went on to explain that when it provided its internal review response, it stated:

*"When using the section 12 exemption the ICO advises authorities not to give the requester part of the information requested without giving them the chance to say which part they would prefer to receive. However, if you wish to resubmit your request detailing those questions which you feel are the most important for us to answer, we may be able to disclose the information to you.*

*In order to assist you with prioritising your questions, the following may assist. Answering questions 3 and 4, in relation to the withdrawal rates, would take more than 18 hours due to how the information is held on our system. The answers to questions 1, 2 and 5 are either already available from HESA (<https://www.hesa.ac.uk/>) or will be available in the future, and so would be exempt under sections 21 and 22 of the Act.*

*In addition, some of the information you require may be detailed on the following University webpage:  
<http://www.sussex.ac.uk/ogs/policies/equalityduty>."*

24. The University pointed out that it had identified where the complainant might obtain some of the information that he was asking for and also highlighted some of the questions where it knew that the time limit would be exceeded for that question alone. It informed the Commissioner that the complainant did not resubmit his request or contact it in relation to the information that it could provide.

25. In light of the responses provided by the University to the complainant, the Commissioner is satisfied that it did attempt to assist the

complainant with a view to refining his request so that it did not exceed the appropriate limit under section 12. She has therefore determined that it has complied with its duty under section 16 to provide advice and assistance.

## Right of appeal

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26. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**