

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2018

Public Authority: University of Cambridge
Address: University Offices
The Old Schools
Trinity Lane
Cambridge, CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested information about communications and reports. The University of Cambridge (the University) says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so.
2. The Commissioner's decision is that the University is not obliged to comply with the request under section 12(1). However, she finds the University breached section 16 (duty to provide advice and assistance) of the FOIA. No steps are required as a result of this decision.

Background

3. The Commissioner notes that this case relates to a Cambridge PhD student who was murdered while pursuing fieldwork in Egypt in February 2016. The named Professor was his doctoral supervisor. Although the circumstances of the death are in the public domain, the formal police investigations are ongoing and therefore the Commissioner has redacted the name of the student and the supervisor in this decision notice.
4. The Commissioner also notes that the complainant is a journalist.

Request and response

5. On 15 October 2017 the complainant made the following request for information under the FOIA:

'I am a New York-based investigative journalist and I now write for BuzzFeed.

With this email I am filing a Fol request.

I would like to have access to copies of:

1) All electronic or paper communication that the University of Cambridge and in particular Professor [redacted name of supervisor] had with [redacted name of student];

2) Any report or paper that [redacted name of student] ever filed with the University and in particular with professor [redacted name of supervisor].

6. On 6 November 2017 the University responded. It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £450.
7. The University explained that the request was for *'records from an unlimited period and (apart from naming [redacted name of supervisor]) without any delimitation of correspondents from amongst the wide range of University employees who might have been in communication with [redacted name of student].'*
8. On 6 November 2017 the complainant requested an internal review. He stated *'Beside the fact that I specified the names of the parties whose communications I am interested in ([redacted name of student] and [redacted name of supervisor], if, after the death of [redacted name of student], the University of Cambridge did not search, identify and selected ALL exchanges of information involving [redacted name of student] and [redacted name of supervisor], it would an incredible lack of fiduciary duty, respect toward his family and the investigators who are trying to shed light on his murder.'*
9. The University sent the outcome of its internal review on 28 November 2017 upholding its original decision to cite Section 12: *'You did not ask solely for correspondence involving [redacted name of supervisor]; you asked for 'all electronic or paper communication' between [redacted name of student] and the University, and for 'any report or paper that*

[redacted name of student] ever filed with the University'. This is a significantly broader request than just one limited to [redacted name of supervisor]...'

10. The University went on to consider section 14:

'Even if the information was to hand already, or could be compiled within the appropriate limit, I consider that the University would have good cause to find your request vexatious under section 14(1) of the Act. This is because of the oppressive burden that would be placed upon the University in needing to manually review the information to ascertain whether any of it is exempt under the various exemptions in Part II of the Act, in particular that for personal information. It would also be distressing for [redacted name of student]'s family for such information to be released into the public domain and to that extent I would regard your request as a 'manifestly [...] inappropriate or improper use of [the] formal procedure' of submitting a request under the Act (Information Commissioner and Devon County Council vs Mr Alan Dransfield; [2012] UKUT 440 (AAC)).'

Scope of the case

11. On 29 November 2017, the complainant contacted the Information Commissioner to complain about the way the request for information had been handled. He stated: *'I thought I made clear that I was asking the University to search, identify and select all exchanges of information involving [redacted name of student] and his tutor ad[sic] Cambridge, [redacted name of supervisor], NOT all the communications between [redacted name of student] and the University.'*
12. The Commissioner's investigation has focussed on whether the University correctly applied section 12 to the request. She has also considered whether the University met its obligation to offer advice and assistance, under section 16.
13. If the Commissioner finds that the University is not entitled to rely on exemption Section 12 as a basis for refusing to provide the withheld information then the Commissioner will consider section 14.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

14. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
- either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
15. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the University.
16. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
- determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
17. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Would the cost of compliance exceed the appropriate limit?

18. As is the practice in a case such as this, the Commissioner asked the University to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
19. In its submission to the Commissioner, the University did not accept that the request could be interpreted as limited in scope to correspondence between [redacted name of student] and his doctoral supervisor. This was explained to the complainant in the internal review. The complainant *'asked very explicitly for **All** electronic or paper*

communication' and 'Any report or paper' held by the University meeting his descriptions, and only stated in both cases that he was interested 'in particular' in information held by [redacted name of supervisor].'

20. The University confirmed that there is some information relating to the request:

'The University is aware that the requested information will be held to some degree, but as the request was a 'fishing expedition' in asking for 'all' information it neither knows where it is all located nor the full extent to which it is held. As a result, the scope of [redacted name of complainant]'s request as submitted is potentially limitless.'

21. The University also explained that a search *'would involve an extensive exploratory exercise in the first instance simply to locate all of the information within numerous individual email accounts and other IT systems maintained by the University (including but of course not limited to those used or accessed by [redacted name of supervisor]). It is the University's belief that the appropriate limit would be significantly exceeded during the exercise of locating the information which could take several days.'*

22. The University also explained that an automated search was not possible: *'Any automated search exercise would produce numerous 'false positives' due to the extensive interest in [redacted name of student]'s death and accordingly such automated searches would need to be supplemented by manual review to identify the precise information within scope. It was and remains the University's belief that the exemption self-evidently is engaged and no sampling exercise was carried out as a result.'*

23. The Commissioner has considered both interpretations of the request: the narrower interpretation by the complainant and the wider interpretation by the University. Looking at the specific wording of the request, the Commissioner accepts that it was reasonable for the University to use the wider interpretation of the request.

24. Given the wide ranging request for 'all' correspondence and reports, the Commissioner is prepared to accept that the University would take more than the 18 hour limit to respond to the request. She is therefore satisfied that the University is correct to apply section 12(1) to the request. The Commissioner has not, therefore, gone on to consider the arguments provided by the University on section 14.

Section 16(1) – The duty to provide advice and assistance

25. 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 practice (the “code”)¹ in providing advice and assistance, it will have complied with section 16(1).
26. The University stated that it had considered *'whether it might have been reasonable to inform [redacted name of complainant] that the search exercise necessitated by his request could have been fulfilled within the appropriate limit if he had limited it to the information he stated he was focussed on 'in particular' – namely, relevant emails/letters and reports/papers held by [redacted name of supervisor], especially if we had advised that he specify a date range.'*
27. However, the University did not offer this advice to the complainant as it also considered the request to be vexatious under section 14 of FOIA. There would be a *'disproportionate burden'* to manually reviewing all documents for personal information and for information prejudice to the prevention and detection of crime: *'UK police are carrying out a criminal investigation ... and the University is continuing to provide information to the police.'*
28. The Commissioner notes the continuing police investigations and the University's consideration of providing advice on a more limited interpretation of the scope of the request. The Commissioner also notes that the University directed the complainant to the following news link: <http://www.cam.ac.uk/notices/news/statements-from-the-university-of-cambridge-about-the-death>
29. However, as the University did not provide advice and assistance to the complainant, the Commissioner considers that the University breached section 16 of the FOIA. No steps are required as a result of this decision.

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

Right of appeal

30. If 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

31. 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.
32. 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

**Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**