

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 June 2019

**Public Authority:** University College London  
**Address:** Gower Street  
London  
WC1E 6BT

#### Decision (including any steps ordered)

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1. The complainant requested demographic and academic information about applicants of a particular programme, as well as about those who had been offered an interview or a place.
2. The Commissioner's decision is that University College London (UCL) has correctly applied section 12 of the FOIA (cost of compliance exceeds the appropriate limit), and that it has fulfilled its statutory obligation under section 16 to provide advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 23 August 2018 the complainant wrote to UCL and requested information in the following terms about the London School of Geometry and Number Theory (LSGNT):
  - i) *"To disclose all the information on nationality, ethnicity and colour of all applicants of the LSGNT, and those who got an interview from LSGNT, who got an offer from LSGNT. This should include all applicants applied for LSGNT every year.*
  - ii) *All applicants' academic profile and the grades of their application (I was told that selectors will grade each application during the selection process) and the outcome of their application."*

5. UCL responded on 24 August 2018 asking for confirmation of the years the complainant sought information for. The complainant replied on the same date that she wished to obtain information about all years.
6. On 29 August 2018 the complainant additionally asked for information about the nationality, ethnicity and 'colour' of supervisors selected for the applicants.
7. UCL contacted the complainant on 3 September 2018 to clarify her request, in particular 'academic profile' and provided a list of information it believed it may include. The complainant responded on that date explaining she "*meant 'everything' you took into account when making the decision of their applications*".
8. On 14 September 2018 UCL responded to the request and refused to provide the information. It cited section 12 as its basis for doing so. UCL advised that it could provide some information falling within the first limb of the request under the cost limit. It offered further assistance if required to provide this, and additionally explained that it did not hold any information on 'colour'.
9. Following this UCL attempted to guide the complainant in submitting a narrowed request that was likely to come under the appropriate cost limit, by asking her to clarify what information she would like to obtain.
10. The complainant declined to do this and asked it to send her what information it could under the cost limit. UCL explained that it was not valid to ask for the same information as she had previously, as it would again, be refused due to cost. The complainant maintained that she wanted any of the information she could have under the original request and refused to submit a new, narrowed request.
11. On 1 October 2018 UCL again refused the request citing section 12. It repeated its offer to provide some of the information from limb one of the request, and again stated that she would need to be clear as to what information was required.
12. The complainant requested an internal review on 1 October 2018. UCL wrote to the complainant on 12 October 2018 with its response. It upheld its original position and refused to provide the information, citing section 12.

## Scope of the case

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13. The complainant contacted the Commissioner on 9 November 2018 to complain about the way her request for information had been handled.
14. The Commissioner considers the scope of the case to be whether UCL was correct in applying section 12 to refuse the request, and whether it fulfilled its obligation under section 16, to provide advice and assistance to the complainant to refine the request and bring the cost under the appropriate limit.

## Reasons for decision

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### Section 12 – cost exceeds appropriate limit

15. 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.
16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 (“the Fees Regulations”) sets the appropriate limit at £450 for the university.
17. A public authority can estimate the cost of complying with a request using a figure of £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 18 hours of officer time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken 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.
18. Tribunal decisions have made it clear that an estimate for the purposes of section 12 has to be ‘reasonable’ which means that it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.
19. In evidence as to whether it has correctly applied section 12 of the FOIA in this case, UCL provided a detailed estimate of the time/cost it would take for it to provide the information.

20. UCL provided a description of the work it has estimated it would require to respond to limb 2 of the request to the Commissioner. As the cost exceeded the appropriate limit looking at this part of the request alone, it did not examine the other limbs of the request to determine the cost estimate.
21. It identified the appropriate person to approach for the LSGNT programme in order to identify, locate, extract and retrieve the information the complainant requested.
22. UCL provided the Commissioner with an email chain between the Data Protection and Freedom of Information Officer (DP&FOIO) and the LSGNT Centre Manager discussing the request to ascertain what information was required, and how long it would take to identify and retrieve the information the complainant had requested.
23. It explained to the Commissioner that the information is held in applicant bundles stored on a database and that there was no way to retrieve the data in bulk. Thus each application would need to be downloaded and assessed on an individual basis.
24. The Centre Manager advised the DP&FOIO that it does not collect ethnicity information from its applicants at the initial application phase, but only obtains this once candidates have accepted an offer.
25. UCL advised the Commissioner that a sampling exercise was carried out on two occasions for limb 2 of the request:
  - The files are held in an electronic format on a database.
  - UCL looked at two years as a sample – 2017 and 2018, as there had been hundreds of applications over the five years LSGNT has been running.
  - There were 191 applications in 2017, and 192 in 2018.
  - It found that it took 20 minutes to look at one file and extract the information for 1 applicant, and 10 minutes for the second applicant. Therefore it stated it would take approximately 15 minutes to provide the information for each applicant.
  - It looked at 383 records for years 2017 and 2018. 15 minutes multiplied by 383 equals a total of 5,745 minutes. This equates to 95 hours. 95 hours at £25 per hour would equal £2375.
  - This would result in the cost of responding to the request being over the appropriate limit by a large margin.

## Section 16 – Advice and Assistance

26. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed to the provisions in the Code of Practice in relation to the provision of advice and assistance to bring the cost of a request under the appropriate limit. This can be found in paragraph 2.10 of the Code.
27. Paragraph 6.9 of the Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

*"...should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit. This may include suggesting that the subject or timespan of the request is arrowed"<sup>1</sup>*
28. During the course of correspondence and on various occasions, the complainant was given advice and assistance in order to bring the request under the appropriate limit. UCL advised her that it could provide some information falling within limb 1 of her request and that it may also be possible to include information about supervisors.
29. There was some correspondence from the complainant regarding whether the refined request was a new request. Specifically, whether she was obliged to submit a new request, or whether UCL could supply her with some information under the appropriate cost limit in regards to her original request.
30. The complainant declined to confirm the information she was interested in that was likely to be possible to provide under the cost limit and requested *"as much information as possible"*. This resulted in UCL issuing a second refusal notice.
31. The internal review provided by UCL also contained advice and assistance. It stated the complainant was free to make a further request

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

for information, providing it contained clarity about what information she required.

32. Following the internal review it appeared likely that the request could be fulfilled. However, after further correspondence there was more confusion about what information was being requested and whether it was a new request. This was not resolved and UCL subsequently stated it would not look at the same, repeated request again.
33. The guidance the ICO has published on section 12 states that:  
*"The Commissioner considers that the implication of the original estimate remaining valid is that the refined request becomes a new request. This means that the statutory time for compliance commences on the date of that new request."*<sup>2</sup>
34. Paragraph 6.9 of the Code of Practice, explains that *"Any refined request should be treated as a new request for the purposes of the Act."*
35. Therefore, the Commissioner finds that UCL have complied with its statutory obligation under section 16 to provide advice and assistance. It also correctly advised the complainant that any narrowed request would be treated as a new request.

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

## Right of appeal

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36. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

37. 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.
38. 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**