

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2020

Public Authority: The University Council
University College London

Address: Gower Street
London
WC1E 6BT

Decision (including any steps ordered)

1. The complainant has requested University College London (UCL) to disclose information relating to its monitoring of the ethnicity balance of recruitment panels. Initially UCL stated that the requested information is not held. However, during the Commissioner's investigation UCL claimed a late reliance on section 12 of the FOIA.
2. The Commissioner's decision is that UCL is entitled to rely on section 12 of the FOIA in this case. She has however recorded a breach of section 10 and 16 of the FOIA, as UCL failed to respond to the request in the statutory timeframe for compliance and failed to provide advice and assistance to the complainant. UCL has now provided advice and assistance to the complainant, so the Commissioner does not require any further action to be taken.

Request and response

3. On 11 August 2019, the complainant wrote to UCL and requested information in the following terms:

"I require a summary of UCL HR's data for the past 36 months produced from monitoring the ethnicity balance of job interview panels which assesses how regularly ethnicity balances are not achieved including information on the ethnic make-up of those panels where an ethnic balance was not achieved and what action was taken."

4. The complainant contacted the Commissioner on 21 September 2019, as UCL had failed to respond.
5. UCL responded on 24 September 2019. It stated that it does not hold the requested information.
6. The complainant requested an internal review on 24 September 2019.
7. UCL completed the internal review and notified the complainant of the outcome on 8 October 2019. It confirmed again that the requested information is not held.

Scope of the case

8. The complainant contacted the Commissioner again on 22 October 2019 to complain about the way his request for information had been handled. He stated that he was unhappy with UCL's response and does not believe UCL does not hold the requested information.
9. During the Commissioner's investigation UCL claimed a late reliance on section 12 of the FOIA. The Commissioner therefore considers the scope of her investigation to be to determine whether UCL is entitled to rely on section 12 of the FOIA on this occasion or not.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations').
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for UCL is £450.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for UCL.

13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12(1) is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether, despite this being the case, there is a public interest in the disclosure of the information.
16. UCL initially responded to this request stating that it does not hold the information. However, during discussions with the Commissioner it came to light that UCL was unsure whether the requested information is held or not and that to determine this with certainty it would exceed the cost limit. UCL stated that it appreciated its Recruitment and Selection Policy sets out the expectation that recruiting panels will reflect an ethnicity balance wherever possible. However, it stated that there are often business reasons why this is not possible, for example, where it would create an unnecessary burden on the individual members of staff. It also acknowledged that the policy sets the expectation that UCL will monitor the ethnicity balance of its recruitment panels and therefore it will hold central data on this which can easily be retrieved. In reality however the monitoring is much less formal than that. There is no specific formal monitoring, instead individual departments are expected to keep an eye on this and conduct spot checks. If any records are held relating to these spot checks they will be held at local level. Records are not held in a centralised way; HR do not therefore hold centralised information in

relation to spot checks regarding the monitoring of the ethnicity balance of those who sit on recruitment panels.

17. UCL confirmed in order to determine whether it holds any recorded information it would need to contact all institutes, departments and divisions at UCL to determine what information they hold locally. UCL advised that there are 140 separate institutes, departments or divisions.

18. It stated that it has estimated that it would take in excess of 18 hours (the appropriate limit for UCL under the FOIA) to comply with the complainant's request and this is based on a sampling exercise. UCL confirmed that it contacted three institutes or divisions in order to calculate an average time to i) determine whether they hold any information and ii) if they do, to locate, retrieve and extract that information. The three institutes or divisions were:

Division of Surgery

Institute of Women's Health; and

Information Services Division.

19. For the Division of Surgery, UCL estimated that it would take 14 minutes to determine and location any relevant information. It stated that this involved discussing the Division's approach to recruitment panel recording and conducting spot checks. The contact subsequently checked their records and confirmed that they do not hold any relevant information on recording and completing spot checks relating to the monitoring of the ethnicity balance of recruitment panels that they set up.

20. UCL confirmed that for the Institute of Women's Health, it took 6 minutes to determine and locate the information they held. This involved discussing the Institute's approach to recruitment panel recording and conducting spots checks as well as the contact locating the local records they held relating to this.

21. For the Information Services Division, UCL said that it took approximately 14 minutes to determine and locate any relevant information. Again this involved discussing the Division's approach and the contact checking their records. The contact for this Division confirmed that they do not hold any relevant information.

22. Based on the above, UCL estimated that it would take each department, division and institute an average of 11 minutes to determine if it holds the requested information and if it does to retrieve it. On the basis of that estimate and extrapolating that across 140 institutes, departments

and divisions, it estimated that it would take it 25.6 hours to comply with the complainant's request.

23. Based on how UCL has explained how the ethnicity balance of recruitment panels is monitored, where the recorded information would be held if indeed it is, the number of different departments, institutes and divisions it would need to check and the sample conducted of three of those, the Commissioner is satisfied that section 12 of the FOIA applies to this request. She considers the estimate provided is reasonable based on how UCL has described the spot checks taking place and where the information would be held relating to these, if indeed it is.

Section 16 advice and assistance

24. The application of section 12 of the FOIA automatically triggers the duty to provide advice and assistance in accordance with section 16 of the FOIA. As UCL claimed a late reliance on section 12 of the FOIA during the Commissioner's investigation, UCL had not fulfilled its obligations under section 16.
25. The Commissioner therefore requested UCL to provide appropriate advice and assistance to the complainant. UCL complied and wrote to the complainant on 22 January 2020. It explained how it felt he could phrase or frame a new request which it would be able to process within the cost limit.
26. The Commissioner has recorded a breach of section 16 of the FOIA, as UCL failed to provide advice and assistance. But she does not require any further action to be taken, as UCL has since complied and contacted the complainant.

Procedural matters

27. Section 10 of the FOIA requires public authorities to respond to information requests promptly and in any event no later than 20 working days from receipt.
28. It is clear in this case that UCL did not respond to the request within the statutory 20 working days. The Commissioner has therefore recorded a breach of section 10 in this case.

Right of appeal

29. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Samantha Coward
Senior Case Officer
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Cheshire
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