

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 February 2024

**Public Authority:** Council of The University of Birmingham  
**Address:** Edgbaston  
Birmingham  
B15 2TT

#### Decision (including any steps ordered)

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1. The complainant has requested communications sent to and received by a named Professor that relate to Queen's University Belfast. The University of Birmingham ("the University") refused to comply with the request, citing section 12(1) (cost of compliance) of FOIA as its basis for doing so.
2. The Commissioner's decision is that the University was entitled to rely on section 12(1) of FOIA to refuse to comply with the request. The Commissioner also finds that the University complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the University to take any further steps.

#### Request and response

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4. On 12 August 2023, the complainant wrote to the University and requested information in the following terms:

"Under the FOIA 2000, I am issuing a request for:

All the sent and received communications (whether internal, external, and regardless of the platform) of [redacted] that are related, however tangentially, to Queen's University Belfast. Such search can be limited to exchanges that took place after the 1<sup>st</sup> of January 2023. The nature of this request includes, but is not limited to: e-mail, physical correspondence, chat exchanges, messaging exchanges, etc."

5. The University responded on 11 September 2023. It stated that it would take more than 18 hours to comply with the request and therefore it cited section 12 of FOIA. It also provided advice as to how the request could be refined in order that it may be dealt with under the appropriate limit.
6. Following an internal review the University wrote to the complainant on 12 October 2023. It maintained its reliance on section 12 of FOIA to refuse the request.

## Reasons for decision

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### Section 12 – cost of compliance

7. Section 12(1) of FOIA provides 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").
8. The appropriate limit is set in 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 the University is £450.
9. 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 the University.
10. 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.
11. 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.
  12. However, it must be a reasonable estimate. In accordance with the First-tier Tribunal in the case *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.
  13. Section 12 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 there is a public interest in the disclosure of the information.
  14. Where a public authority claims that section 12 of 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 FOIA.

### **Would the cost of compliance exceed the appropriate limit?**

15. In this case the University explained that it carried out initial searches on the Professor's email inbox using the search terms 'Queen's Belfast' and 'QUB'. These searches returned 318 emails in total.
16. The University noted that the scope of the request was seeking communications “that are related, **however tangentially**, to Queen's University Belfast”. Therefore, to ensure that it captured all potentially related communications, the University also undertook searches of the Professor's email inbox for the terms 'Queen's' and 'Russell Group', as both Queen's University Belfast and the University of Birmingham are members of the Russell Group. These searches returned a further 768 emails.
17. The University stated that it considered it to be realistic that it would take a member of staff approximately 2 minutes per email to determine whether each email falls within the scope of the request. Therefore, it estimates that to check all 1,086 emails returned across the searches of the Professor's inbox would require approximately 36 hours of staff time.
18. On reaching the above estimate, the University concluded that it was not necessary to continue conducting searches of other potential sources

of information falling within the scope of the request – such as the Professor's sent email items, other digital communication platforms, correspondence held in paper form, etc. – as the work required on the email inbox items alone far exceeded the appropriate limit.

19. The University also highlighted that it has no faster or automated methods of checking if the identified emails are relevant to the request or not. Therefore, manually reviewing each of the 1086 emails is the University's fastest and only method of determining if they fall within the scope of the request.
20. The Commissioner notes that the University did not explain why it would take as long as 2 minutes to briefly scan each email to determine if it falls within the relatively broad scope of the request. Nonetheless, the Commissioner's published guidance<sup>1</sup> explains that an estimate does not have to show the exact cost of complying with the request. It simply has to be robust enough to establish whether the request would exceed the appropriate limit. In some cases, a quick calculation will be all that is needed to show that the cost would clearly be above or below the limit.
21. In this case, even if the University allowed for a more conservative estimate of only 1 minute per email, the total time required for the inbox alone would be equal to the 18 hour appropriate limit. Therefore, the work required to address any further information falling within the scope of the request – i.e. sent email items, other digital communication platforms, correspondence held in paper form, etc. – would clearly take the University beyond the appropriate limit.
22. The Commissioner concludes that the University estimated reasonably that it would take more than the 18 hours/£450 limit to comply with the request in full. The University was therefore entitled to refuse the request in accordance with section 12(1) of FOIA.

### **Section 16 – the duty to provide advice and assistance**

23. Section 16(1) of 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

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#produce-an-estimate>

code of practice<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).

24. The Commissioner notes that in its initial response to the request on 11 September 2023, the University advised the complainant that it may be able to provide a response under the appropriate limit if they either reduced the time frame of the request, or by narrowing the scope of the request by reference to specified search criteria, with the effect that the focus is more specific than current very broad criteria of “all communications related, however tangentially, to Queen’s University Belfast”. The Commissioner is therefore satisfied that the University met its obligations under section 16 of FOIA.

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[https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## Right of appeal

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25. 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: 0203 936 8963

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)

26. 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.
27. 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 .....**

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