

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 January 2015

**Public Authority:** Cambridge Assessment  
**Address:** 1 Hills Road  
Cambridge  
CB1 2EU

### Decision (including any steps ordered)

---

1. The complainant has requested from Oxford, Cambridge and RSA ("OCR") details relating to candidates in examinations administered by OCR for the academic year 2012/13.
2. OCR stated that most of the information requested is not held by (or on behalf of) OCR. However, OCR confirmed that it does hold the information on the remaining points of the request and that it could provide this information to the complainant in a certain format.
3. The Commissioner requires OCR to disclose to the complainant the information requested in the second part of points 6 and 12 of the request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Request and response

---

5. On 29 January 2014, the complainant wrote to OCR and requested information in the following terms:

*"Could you please answer the following under the provisions of the Freedom of Information Act (FOIA). The questions relate to candidates in*

*examinations administered by OCR for the academic year 2012/13.  
Please acknowledge your receipt of this request.*

*I have been advised that OCR should hold data on access arrangements listed by centre, so the breakdowns below should be possible and should be possible for you to calculate well within the 18-hour work rule (see FOIA Sec. 12).*

- 1. For the academic year 2012/13, what was the total number of GCSE candidates granted an access arrangement of up to 25% extra time?*
- 2. Of the total number from question 1, how many candidates were at examination centres that are fee-paying (independent) institutions?*
- 3. Of the total number from question 1, how many candidates were at examination centres that are state-funded institutions?*
- 4. What was the total number of GCSE candidates at fee-paying (independent) institutions entered for examinations in 2012/13?*
- 5. What was the total number of GCSE candidates at state-funded institutions entered for examinations in 2012/13?*
- 6. If a breakdown of the answer to question 1 is not available by centre type, please provide the full list of GCSE centre names (or if unavailable, centre number) for 2012/13 with the number of students at each centre who were granted an access arrangement of up to 25% extra time. Please also provide the total size of the GCSE examination entry cohort (total number of GCSE candidates) for each centre.*
- 7. For the academic year 2012/13, what was the total number of AS-level and A-level candidates granted an access arrangement of up to 25% extra time?*
- 8. Of the total number from question 7, how many candidates were at examination centres that are fee-paying (independent) institutions?*
- 9. Of the total number from question 7, how many candidates were at examination centres that are state-funded institutions?*
- 10. What was the total number of AS-level and A-level candidates at fee-paying (independent) institutions entered for examinations in 2012/13?*
- 11. What was the total number of AS-level and A-level candidates at state-funded institutions entered for examinations in 2012/13?*
- 12. If a breakdown of the answer to question 7 is not available by centre type, please provide the full list of AS-level and A-level centre names (or*

*if unavailable, centre number) for 2012/13 with the number of students at each centre who were granted an access arrangement of up to 25% extra time.*

*Please also provide the total size of the AS-level and A-level examination entry cohort (total number of AS and A-level candidates) for each centre."*

6. The OCR responded on 13 February 2014. It stated that it does not hold the information requested.
7. Following an internal review the OCR wrote to the complainant on 13 March 2014. It explained that the data is not held by (or on behalf of) OCR and it stated that it is therefore not obliged (nor in a position) to disclose the requested information.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 12 June 2014 to complain about the way his request for information had been handled.
9. The Commissioner will consider whether OCR handled the request for information in accordance with the FOIA and he will determine whether it is correct to state that it does not hold the information requested
10. In order to put its responses into context, OCR provided the Commissioner with the following background information:

*"The JCQ (Joint Council for Qualification's) operates the AAO (Access Arrangements Online) system which allows schools and colleges (centres) to submit all GCSE and GCE access arrangement applications and order modified papers quickly and efficiently."*

## **Reasons for decision**

---

### **Section 1 – information not held**

11. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of

a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

### **Section 3(2) public authorities**

14. Section 3(2) of FOIA states:

*"For the purposes of this Act, information is held by a public authority if –*

*(a) it is held by the authority, otherwise than on behalf of another person, or*

*(b) it is held by another person on behalf of the authority."*

Section 3(2)(b) provides that in circumstances where information is held by another person on behalf of the public authority, the information is considered to be held by the authority for the purposes of FOIA.

15. The complainant argued OCR's statement that the information is not held is inconsistent with the legal requirement for OCR to have *"knowledge of its candidates' requirement for Access Arrangements."*
16. The complainant argued that the information is held by JCQ on behalf of OCR. He explained that the AAO system is an IT data system and not a public or commercial body therefore, the complainant argues that the OCR's response is inaccurate and information should be disclosed under the FOIA.
17. The complainant is of the view that it is in the public interest for the information to be disclosed as the issue is about fairness in national public examinations. The complainant explained to the Commissioner his reasons for seeking the information. He said this is due to the fact that he has evidence that a number of private school pupils are awarded extra time in exams as compared to state school pupils and he argued that this topic is in the public interest.
18. The complainant maintained his argument that the data is OCR data and is held by OCR. He stated to the Commissioner that the information is held on the AAO system, into which school examination officers input data relating to OCR examinations.

19. The Commissioner noted that OCR explained to the complainant the reasons why it does not hold this data. It stated that this is because of the majority of Access Arrangement cases (95% approximately) are dealt with by the JCQ for AAO service and not by OCR. It added that one of the reasons for this is for decisions to be consistent across awarding bodies.
20. The Commissioner enquired as to the nature of OCR's relationship with the JCQ. OCR explained *that "the JCQ is incorporated as a Community Interest Company limited by guarantee. It has 7 members and OCR is one of its members. Each member appoints a representative to act as a director. The articles of association of the JCQ CIC determine the objects, powers and limitation of liability."*
21. OCR confirmed to the Commissioner that it does not have general access to the AAO system to obtain general data.
22. The complainant highlighted to the Commissioner the fact that the examination boards contract out the administration of this data to its *"own pooled trade body"* in his view *"does not mean they no longer own or hold the data."* He therefore argues that section 3(2)(b) of the FOIA is relevant in this instance.
23. OCR clarified to the Commissioner why it considers section 3(2)(b) of the FOIA does not apply to this request. It stated that JCQ contracts directly with the supplier who operates the system for and on behalf of the JCQ. OCR explained that the JCQ own and operate the AAO system and have access to the system and the information it contains. It added that it does not hold the information on behalf of the AOs (Awarding Organisation) but as a service to centres and candidates.
24. OCR provided the Commissioner with an explanation as to why it considers the requested information is *"not our information to give out"*. OCR reiterated that the AAO is owned and operated by the JCQ and that centres make applications into an automated system therefore, approval of this applies to all AO exams. OCR added that information relating to access request is held on the AAO system, which does not break the data down by AO, nor does it hold on the system information about the type of centre which has requested the access arrangement.
25. OCR stated that it is not in a position to provide the information requested as JCQ does not hold it on behalf of OCR.
26. During the investigation, the Commissioner asked OCR to confirm whether it is able to access or retrieve information for its own business purposes from the JCQ. OCR confirmed that it is not able to access or retrieve information for its own business purposes but that it is only able

to access the information to approve or reject a specific candidate's application. OCR stated that the JCQ does not access or locate applications as their role is not to approve or reject applications.

27. The Commissioner has noted from OCR's correspondence that *"the centre retains the information/evidence needed for the application on file for inspection purposes."* He asked OCR to expand on this and explain what information is held which would answer the complainant's questions. OCR explained to the Commissioner that there is no information held by a centre which would answer the complainant's questions. OCR confirmed that information is held outside the JCQ system and clarified that *"the centre build a picture of need for the candidate and retains this as evidence which supports the online application."* It stated that this is personal data which relates directly to a particular candidate this information would not answer the complainant's FOI request.
28. Following further investigation from the Commissioner, OCR confirmed whether it is able to provide details to question 12 of the complainant's request.
29. OCR stated that it does not have a function where a report can be created which provides the full list of OCR centre names or centre number with the number of students at each centre who were granted an access arrangement.
30. OCR explained that in order to provide information to the first part of point 12 of the request, it would need to extract the data from its own system (the names of all the AS-level and A-level centres). It would then have to search each centre name on the AAO system to discover if it had any candidates who were granted an access arrangement. The information in the first part of question 12 of the request is also therefore not held as it can only be obtained by searching the AAO system. OCR further explained that the same explanation applies to the first part of point 6 of the request.
31. The Commissioner is satisfied that in order to provide the information request in all but the second parts of requests 6 and 12, OCR would need to access the AAO system. The Commissioner is further satisfied that OCR has no access to this system but that the information is held by the JCQ not on their behalf.
32. Regarding the second part of points 6 and 12 of the request, OCR stated that it does hold the information on the total number of candidates for each centre for AS-level and A-level. OCR added that it could provide this information in a certain format. However, OCR explained that some of these candidates may have entries across both GCE and GCSE and

therefore may be counted twice per centre. Also, OCR informed that some candidates may be entered through two or more centres which would lead to multiple counts. OCR considers that this would not be *"data in the cleanest sense."*

33. However, information is held for the purposes of FOI even if the information is not 'accurate' and therefore in light of the explanation above the Commissioner considers that OCR hold the information in the second part of request 6 and 12 and should provide this to the complainant.

## **Conclusion**

34. In view of the above, the Commissioner is satisfied that on the balance of probabilities, the information requested all but the second parts of request 6 and 12 of the request is not held by OCR or on behalf of OCR for the purposes of the FOIA. The Commissioner does not consider that there is any evidence of a breach of section 1 of the FOIA.
35. The Commissioner requires OCR to disclose to the complainant the information relating to the second part of points 6 and 12 of his request.

## Right of appeal

---

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: 0116 249 4253

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)

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** .....

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