

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2024

Public Authority: The Governing Body of the London Oratory School

Address: Seagrave Road
London
SW6 1RX

Decision (including any steps ordered)

1. The complainant has requested various information regarding pupils. The London Oratory School ("School") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that:
 - The School was entitled to rely on section 12(1) of FOIA to refuse the request.
 - The School did not comply with its section 16 obligation to offer advice and assistance.
 - The School did not provide an appropriate refusal notice as required under section 17(1) of FOIA.
 - The School also breached section 1(1)(a) by failing to confirm whether the requested information was held in its response to the complainant.
3. The Commissioner requires the School to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with appropriate advice and assistance to help them submit a request that falls within the appropriate limit.
4. The School must take these steps within 30 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 3 November 2023, the complainant wrote to the School and requested information in the following terms:

“For all questions, the breakdown of data for the current (2023-24) and previous three academic years (2019-20, 2020-21, 2021-2022 and 2022-23) is requested.

1. The number of pupils enrolled.
2. The number and percentage of pupils with an EHCP
3. The number and percentage of pupils with a Special Educational Needs and Disability (SEND) with no EHCP.
4. The number and percentage of pupils
5. The number, percentage and ethnic profile of pupils temporarily excluded from the school.
6. The number, percentage and ethnic profile of pupils permanently excluded from the school.
7. The number and percentage of pupils who participate in Latin classes as opposed to Key Skills classes.
8. The number and percentage of pupils who participate in Key Skills classes as opposed to Latin classes.
9. The number and percentage of pupils who participate in Latin classes who have an EHCP.
10. The number and percentage of pupils who participate in Latin classes who have a SEND and no EHCP.
11. The number and percentage of pupils who participate in Latin classes whose ethnicity is defined as: Black African, Black Caribbean, Black British, Black Mixed or Black Other
12. The number and percentage of pupils who participate in Key Skills classes who have an EHCP.
13. The number and percentage of pupils who participate in Key Skills classes who have a SEND and no EHCP.
14. The number and percentage of pupils who participate in Key Skills classes whose ethnicity is defined as: Black African, Black Caribbean, Black British, Black Mixed or Black Other
15. The number and percentage of Junior House pupils whose ethnicity is defined as: Black African, Black Caribbean, Black British, Black Mixed or Black Other

16. The number and percentage of pupils in Junior House who have an EHCP.
17. The number and percentage of pupils in Junior House who have a SEND and no EHCP.
18. The number and percentage of junior house pupils' ability band placement upon entry to the senior school
19. The number, percentage and ethnic profile of pupils placed in the lower ability bands who have left the school before taking GSCEs.
20. The number, percentage and ethnic profile of pupils placed in the lower ability bands and entered for the higher paper GSCEs.
21. The number and percentage of pupils with an EHCP placed in the lower ability bands and entered for the higher paper GSCEs.
22. The number, percentage and ethnic profile of pupils placed in the lower ability bands who have gone on to study in the LOS sixth form.
23. The number and percentage of pupils with an EHCP placed in the lower ability bands who have gone on to study in the LOS sixth form.

Please also provide a copy of the school's relevant policy / documentation which sets-out the practice and procedures when excluding a pupil from a particular subject lesson, and explain if, when and how parents and carers were consulted with in respect of this practice and procedure."

6. On 20 November 2023, the School informed the complainant that complying with the request would cost too much but did not indicate whether this was in accordance with section 12 or section 14 of FOIA.

Scope of the case

7. The complainant wrote to the Commissioner on 16 June 2024 to complain about the way their case had been handled.
8. During the Commissioners investigation, the School confirmed that it was relying on section 12(1) to refuse the request.

Reasons for decision

Section 12 – cost of compliance

9. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
10. Section 12(1) of the 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 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the School 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 the School.
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. 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 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.
16. 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.

The School's position

17. The School explained to the Commissioner that the request is made up of 23 multi-variable questions over a 5 year period, which in essence equated to the school being required to provide 115 answers for this request.
18. The School advised that not only would it be required to provide 115 answers, but some of the information requested is rather complex and would require significant time gathering and interrogating data held in various ways.
19. The School stated it has previous experience of searching electronically held school data. The below estimate was based on this knowledge of locating and collecting such data, as well as the time required to complete such tasks.
20. The School informed the Commissioner that there were 5 categories for how long it would be required to spend responding to the 23 questions and the work involved in retrieving the information.
 - Category one: was used to describe the simplest information to gather. This information in this category would only require one dataset to be consulted in order for the information to be retrieved. The School advised that for the questions which fell into this category, it would only take approximately one minute to gather the requested information. Of the 23 questions, only one question met condition set out.
 - Category two: was still reasonably simple, but required more than one dataset to be consulted for the requested information. The School advised it would take approximately five minutes to retrieve the information for each of the questions within this category, of which, the School confirmed there were four.
 - Category three: which required more comprehensive work and multiple datasets as well a criteria to be consulted for the requested information. The School confirmed for these questions it would take approximately 10 minutes per question, of which the School advised there were only two.
 - Category four: has a similarity to category three, but unlike category three, alongside the multiple data sets requiring consulting, it was also required to consider an additional criteria. For this category, the school advised it would take approximately

15 minutes to answer each question, of which, it confirmed there were 10.

- Category five was for the most complex questions within the request. To answer these questions, the School was required to review multiple datasets and multiple categories. The School advised that for such requests, it would take approximately 20 minutes to answer each of these questions, of which there are 6. An example of this was question 19, in this question the complainant has asked for three separate pieces of data to be provided and three other criteria would need to be considered.

21. The School confirmed that it would be required to conduct this process for 5 different years. Leading it to conclude that complying with the request would take approximately 26 hours, which is clearly in excess of the appropriate time limit.

The Commissioner's view

22. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
23. Having reviewed the position of the School and the broad nature of the request, the Commissioner is satisfied that complying with such a large request would exceed the cost limit, especially when considering the number of questions which must be considered over a larger period of time.

Procedural matters

24. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
25. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
26. In this case, the School does not appear to have provided any advice and assistance to the complainant – or explained why it is unable to do so.

27. The Commissioner is therefore satisfied that the School did not comply with section 16 of FOIA when dealing with this request.
28. The School must now provide reasonable advice and assistance, to the complainant, to help them refine their request.
29. Section 17 of FOIA requires a public authority to issue a refusal notice, stating any exemptions being relied upon to withhold information, within 20 working days.
30. In the circumstances of this case, the School failed to state that it was relying on section 12(1) when refusing the request and, therefore, it breached section 17 of FOIA. The Commissioner has guidance on how to write a refusal notice and recommends the School takes notes of it for future requests; [Refusing a request: writing a refusal notice \(section 17\) | ICO](#)
31. Section 1(1) is not just a general duty to respond to a request. It consists of two separate duties – the duty to confirm or deny that information is held (1(1)(a)) and the duty to communicate the information (1(1)(b)).
32. The Commissioner finds that the School breached section 1(1)(a) of FOIA by failing to confirm that the requested information was held during its response to the complainant.

Right of appeal

33. 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

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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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