

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2024

Public Authority: The Council of the University of Liverpool
Address: Foundation Building
Brownlow Hill
Liverpool
L69 7ZX

Decision (including any steps ordered)

1. The complainant has requested information from the University of Liverpool (the University) on requests for flexible working arrangements.
2. The Commissioner's decision is that the University is not entitled to rely on section 12(1) (cost limit) FOIA to refuse to comply with the request.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - The University must issue a fresh response to the request which complies with FOIA but does not rely on section 12.
4. The University 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 20 March 2024 the complainant made a request to the University in the following terms:

1. "How many statutory applications for flexible working has the University of Liverpool received from academic staff since 2021? Please provide a breakdown by year (calendar or academic), by school, by department and by gender.
2. How many statutory applications for flexible working by academic staff has the University of Liverpool approved since 2021? Please provide a breakdown by year (calendar or academic), by school, by department and by gender.
3. How many statutory applications for compressed hours' flexible working has the University received from academic staff since 2021 and how many of these applications has the University approved? Please provide a breakdown by year (calendar or academic), school, department and gender.
4. What percentage of line managers, if any, have received training around flexible working?
5. Does the University hold a central HR record of all statutory flexible working applications made as well as statutory flexible working arrangements?"
6. The University responded on 16 April 2024 and refused the request under section 12 FOIA. Following an internal review the University responded to the complainant further on 29 April 2024 upholding its decision.

Scope of the case

7. The complainant contacted the Commissioner on 17 May 2024 to complaint about the response to the information request.
8. The Commissioner considers the scope of his investigation is to determine if the University has correctly refused the request under section 12 FOIA and, if so, if appropriate advice and assistance under section 16 was given.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) 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.

10. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - determining whether it holds the information,
 - locating the information, or a document which may contain the information,
 - retrieving the information, or a document which may contain the information, and
 - extracting the information from a document containing it.
11. In accordance with the Regulations, the applicable cost limit in this case is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the University. This represents the estimated cost of one person spending the equivalent of 2.5 working days locating, retrieving, and extracting the information.
12. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the University was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.

The public authority's position

13. In its refusal notice the University explained that the information that had been requested is not centrally located as flexible working or compressed hours requests are made to, and agreed with, each academic department. The University's HR department confirmed that local agreements will not be reflected in the central CORE HR system so to collate the information each department would need to examine their individual records to find information that might be in scope of the request. The University, at this stage, did not provide a specific time estimate but stated it was "confident" it would take more than 18 hours. The University did however confirm that it did not hold data on the percentage of line managers who have received training on flexible working.
14. The University's internal review response added some further explanations of its position. The University explained it had over 3,850

academic staff who could apply for changes in their working patterns and that approval of flexible working is at the discretion of line managers and is not collated by Head of Department or HR. To respond to the request each line manager would need to be contacted and would have to extract the requested data ie what flexible working arrangement was requested, whether the request was approved or rejected, the date of the request and the gender of the staff member.

15. The University stated that staff could make two applications per academic year so it would be possible for one staff member to have made six applications within the period specified in the request. In addition, some flexible working arrangements may not have been requested through a formal request, or on a permanent basis. For example, a manager may reach an informal arrangement for a temporary change with a trial period agreed. Some staff may need to search through emails to confirm such arrangements.
16. During the Commissioner's investigation he asked the University to provide any further information to support its estimate. The University explained that following its internal review response and the advice and assistance given the complainant made a refined request for information. This refined request asked for the information at parts 1-3 of the request but only for the School of Arts. The University was able to respond to this refined request for one individual School within the University within the cost limit.
17. In responding to this request for information solely related to one School the University states it essentially conducted a retrospective sampling exercise for the original request. The University stated the School of Arts is the smallest School at the University and comprises just four departments. Even so, it took 30 minutes per department to collate the information required to respond to the request. This amounted to a total of two hours to comply with the refined request. The University therefore argues that this shows that section 12 is engaged in relation to the wider request for all information for all 32 departments at the University.

The complainant's position

18. The complainant considers the University should have records of these arrangements and argues that sending an email to each department should only take a few minutes.
19. The complainant considered the Heads of Department should have a spreadsheet with this information so a bulk email could be sent to all of them and the information should be easily retrieved from the spreadsheet. They were concerned the University had not specified how

many line managers there were for academic posts so it was difficult to understand how the request would take so long to fulfil.

20. The complainant suggested the University had also made a misleading statement in stating that staff could make more than one request in a year as the period the request covered was a time when staff could not make more than one request per year. The Flexible Working Policy was changed on 6 April 2024 to allow for two requests.

The Commissioner's view

21. In the Commissioner's view, the public authority has not demonstrated that complying with the request would exceed the appropriate limit.
22. The task for the Commissioner in a section 12 matter is to decide whether the cost estimate was reasonable. It is for the public authority in question to show the Commissioner that the estimate is "sensible, realistic and supported by cogent evidence".
23. In this case in the refusal notice and internal review response the University did not provide an estimated time for complying with the request but asserted it was confident it would exceed the 18 hour limit.
24. The Commissioner accepts the response to the refined request does serve as a sampling exercise even if this should have been carried out on receipt of the original request. However, the estimate given by the University does not appear to meet the 18 hour time limit. The University has stated it is made up of 32 departments and its estimate, based on the School of Arts, is that it took approximately 30 minutes per department to collate the information required. Expanding this to all 32 departments would take 16 hours – under the 18 hours that would cause the request to exceed the cost limit.
25. Of course, the Commissioner appreciates that departments will vary in size and there may be more or less line managers in some departments that in others but even taking these variables into account 30 minutes seems a reasonable amount of time for a department to be able to pull this information together.
26. The University has not specified what this time would actually be spent doing or how the information is held by line managers, if indeed there is a consistent approach to how this information is recorded and retained by each line manager in each department. Given this absence of detail and the 30 minutes that the University itself has suggested each department might need it is difficult for the Commissioner to find that the cost estimate is reasonable.

27. As the Commissioner has found that the cost estimate by the University was not reasonable his decision is that it was not entitled to rely on section 12(1) of FOIA to refuse to comply with the request. As the Commissioner has concluded section 12(1) FOIA does not apply he has not gone on to consider if appropriate advice and assistance to refine the request was given.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
Senior Case Officer
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Wycliffe House
Water Lane
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