

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 November 2024

**Public Authority:** Department for Education  
**Address:** Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

#### **Decision (including any steps ordered)**

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1. The complainant has requested from the Teaching Regulation Agency (TRA) its operating expenditure for the services of legal firms regarding investigation and panel meetings or hearings. They also requested information about the protected characteristics of referred teachers, equality impact assessments, equal opportunity guidance/advice, and information related to prohibition orders.
2. The TRA is an executive agency of (and therefore part of) the Department for Education ("DfE"). For the purposes of this notice the DfE will be referenced as the public authority. The TRA corresponded with the complainant but, in the circumstances, the Commissioner is satisfied that the complainant's correspondence was, in effect, with the DfE and it is the DfE that has dealt with the complaint to the Commissioner. The DfE refused to provide the requested information, citing section 12(1) of FOIA - cost limit.
3. The Commissioner's decision is that the DfE is entitled to rely on section 12(1) of FOIA to refuse to comply with the request. He also finds that the DfE has complied with its advice and assistance obligations in accordance with section 16 of FOIA.
4. The Commissioner does not require further steps.

## Request and response

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5. On 12 February 2024 the complainant made a request for information under the FOIA.
6. The DfE asked the complainant for several clarifications on 16 February 2024.
7. On 22 February 2024 the complainant provided a clarified request.
8. The DfE stated on 18 March 2024 that it held some of the requested information but that it was not readily accessible and “may only be held within individual case files”. It would exceed the cost limit (section 12 of FOIA) to provide it as identifying the data relating to the request and then retrieving it, would mean manually examining each case file. The DfE suggested ways in which the request might come within the cost limit, either by narrowing the information being requested or the timeframe.
9. The complainant narrowed their request on 22 March 2024 as follows:
  - “a) Please provide details relating to the operating expenditure of professional services of legal firms in relation to the investigation, as well as for the panel meetings and hearings. This request includes but is not limited to information relating to each contracted legal firm by the TRA to act as presenting officers and legal advisers:
    - i. costs per case, from initial referral, where the TRA has determined that there is a case to answer – January 2023 to January 2024;
    - ii. costs per case, from initial referral, where the TRA has determined there is no case to answer - January 2023 to January 2024;
    - iii. costs per case, from initial referral, where the TRA has determined there is a case to answer, but withdraw the case for legal and/or procedural reasons - January 2023 to January 2024;
    - iv. costs per case, from initial referral, where the TRA has determined that: (i) the facts are not found; (ii) facts found but not unprofessional conduct by the teacher; (iii) Unprofessional conduct established but no order pronounced; (iv) prohibition order – please note we are requesting information on the PCPs recommendations covering the period January 2023 to January 2024;
    - v. total operating expenditure in the last 12 months for each legal firm contracted by the TRA;

vi. total operating costs in the last 12 months for legal advisers for the panel;

vii. total operation costs in the last 12 months for presenting officers;

viii. whether the legal firms and independent legal advisers are paid on a retainer or hourly bases;

ix. estimated hours spent by legal advisers on a referral where it has been determined there is a case to answer and the case proceeds to a full panel hearing – January 2023 to January 2024;

x. the terms and conditions of the contract with the legal firms.

b) Please provide copies of all information relating to the breakdown of teachers who are referred by – please note we are requesting a breakdown of the number of referred teachers listed by protected characteristics between January 2023 to January 2024:

i. age;

ii. disability;

iii. sex;

iv. race/ethnicity

c) Please confirm the total number of cases within each of the protected characteristics listed in (b) above that were determined by the professional conduct panel. This request includes information on the sanctions imposed by the panel on each protected characteristic, including circumstances where an interim prohibition order is imposed, since January 2023. Please note that we are requesting the breakdown of cases by protected characteristic where a prohibition order (and interim prohibition order) were imposed before (IPO) and following a PCP hearing.

d) Please provide copies of all equality impact assessment reports undertaken by the TRA since January 2023.

e) Please provide copies of all guidance and advice issued by the TRA relating to equal opportunity and judicial trainings (internal and external) provided by the TRA and/or undertaken by all members of the professional conduct panel, since January 2023.

f) Please provide any correspondence or direction issued since 2019 to

the TRA by the Secretary of State for Education or by the Department for Education relating to the use of prohibition orders.”

10. On 18 April 2024 the DfE responded, stating that it did not hold information relating to a) ix, d), e) and f), though it provided a link to a publicly available advice document. It again cited section 12 of FOIA to the rest of the information. The DfE provided some advice and assistance as to how the request could be narrowed.
11. The complainant asked for an internal review on 30 April 2024.
12. On 29 May 2024 the DfE provided its internal review and upheld its position.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 18 June 2024 to complain about the way their request for information had been handled.
14. The Commissioner considers that the scope of his investigation is to decide whether the DfE cited section 12(1) of FOIA appropriately and whether it provided advice and assistance to the complainant.

### **Reasons for decision**

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#### **Section 12 – cost of compliance**

15. 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”).
16. 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 DfE is £600.
17. The notional cost of the staff time needed to comply with a request must be estimated at a rate of £25 per person per hour. This means that section 12(1) of FOIA effectively imposes a time limit of 24 hours for the DfE. For the purpose of its estimate, a public authority can only take account of the costs it reasonably expects to incur in:
  - determining whether it holds the information;

- locating the information, or a document which may contain it;
  - retrieving the information, or a document which may contain it; and
  - extracting the information from a document containing it.
18. A public authority doesn't have to make a precise calculation of the cost of complying with a request; only an estimate is required, however it must be a reasonable estimate.
19. Section 12 isn't subject to a public interest test; if complying with the request would exceed the appropriate limit, there's no requirement to consider whether there's a public interest in the disclosure of the information.

### **The complainant's view**

20. The complainant argued that the DfE did not follow the requirements of section 12 where -

'The estimate, "requires a process to be undertaken which will involve an investigation followed by an exercise of assessment and calculation" (Roberts v IC EA/2008/0050). It must also be reasonable, which means, "sensible, realistic and supported by cogent evidence" (Randall v IC EA/2007/0004).'

Both points are from the Commissioner's guidance.

21. They also question how the public authority:

"manages its record-keeping and how easily the information requested can be obtained. For instance, an authority cannot manage its records in such a way that it will always be able to rely on the s.12 exemption."

### **The DfE's view**

22. The DfE explained that "it does not centrally hold the information in scope of this request". A search of departmental files found over 1700 case files that were potentially within scope. Each file "would need to be read through manually to see if they contained information in scope".
23. It had carried out a sample exercise and estimated that it would take 30 minutes per file, on average, for an official to determine whether it holds information falling within scope. This was explained in the internal review. Based on this estimate it would take over 850 hours to find out if the case files fall within scope. The cost of this would be £21,000, many times more than the £600 threshold for Central Government.

24. The DfE has explained that it provided some information on 18 April 2024 but this was confirming that it did not hold certain parts of the requested information.

### **The Commissioner's view**

25. The complainant referred to the following part of the Commissioner's guidance<sup>1</sup> in their arguments about the estimates provided by the DfE -

"The estimate should not be based on general assumptions, for example, that all records would need to be searched, as such an approach would inevitably inflate the estimate, meaning that many requests could be refused under section 12. Estimates produced on such a basis are not reasonable".

However, the internal review did provide a breakdown of the amount of files that would have to be searched and how long it would take to search each file. The same estimate was provided to the Commissioner.

26. The complainant also highlighted their concerns about how the information is held. However, the Commissioner is not responsible for the way in which a public authority's records should be held. This has to be determined by an authority according to its business needs. If a public authority repeatedly refused requests by citing section 12 of FOIA then this would be a cause for concern but each complaint to the Commissioner is determined on a case by case basis.
27. The Commissioner recognises that there would be a public value to the request – as it would help the public understand how well the DfE was performing an important function. This is not something the law allows him to take into consideration under section 12 of FOIA.
28. Even if the amount of time to search each file was reduced to five minutes it would vastly exceed the fees limit. The Commissioner therefore concludes that the DfE has reasonably estimated that the cost of complying with the request would exceed the appropriate limit. Section 12(1) of FOIA is engaged.

### **Section 16 – advice and assistance**

29. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request so far as it would be reasonable to expect the authority to do so.

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<sup>1</sup> [Requests where the cost of compliance exceeds the appropriate limit \(section 12\) | ICO](#)

30. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 FOIA Code of Practice<sup>2</sup> (the Code) in providing advice and assistance, it will have complied with section 16(1).
31. The Code states that, where a public authority is relying on section 12 to refuse a request, it should help the requester to refine their request within the cost limit.
32. On 16 February 2024 the DfE asked for clarification on several points. The complainant amended their request on 22 February 2024. The DfE then refused the request on 18 March 2024 suggesting that the request be limited to one week or one month as opposed to two years. The complainant then sent another amended request on 22 March 2024 that was limited to one year. On 18 April 2024 the DfE stated that it did not hold information under a) ix, (d), (e) and (f) and again suggested a time limit of one week with regard to certain parts of the request.
33. The DfE explained that it could not provide the information unless it was limited to a much shorter timeframe and the complainant did not do so. As the DfE's suggestion was not taken up, and the request was long, it was unable to provide the requested information within the cost threshold. Therefore the Commissioner accepts that the DfE did provide advice and assistance to the complainant.

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<sup>2</sup> [Section 45 – Code of Practice, request handling | ICO](#)

## **Right of appeal**

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34. 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)

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

**Janine Gregory**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**