

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2024

Public Authority: Teaching Regulation Agency
(part of the Department for Education)

Address: Cheylesmore House
5 Quinton Road
Coventry
CV1 2WT

Decision (including any steps ordered)

1. The complainant has requested information about teacher misconduct hearings. The above public authority (“the public authority”) relied on section 12 of FOIA (costs) to refuse the request.
2. The Commissioner’s decision is that the public authority was entitled to rely on section 12 of FOIA to refuse the request. The public authority also complied with its obligations under sections 10, 16 and 17 of FOIA.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 28 March 2024, the complainant requested information of the following description:
 - “1. From 2019 - 2023 (the period reported on in the table on Page 21 of the 2023 annual report) how many hearings were held that concluded there was no unacceptable conduct? The table shows the number of hearings and the number of Prohibition Orders but not how many times the teacher was found to have behaved professionally.

2. From 2019-2023 (the period reported on in the table on Page 21 of the 2023 annual report) how many of the cases which did not proceed to a hearing
 - a) were closed before investigation?
 - b) were closed on investigation?
 - c) were closed after being passed to the presenting solicitors?
3. From 2019-2023 (the period reported on in the table on Page 21 of the 2023 annual report)
 - a) how many cases closed before investigation were later re-opened?
 - b) how many cases closed after investigation were later re-opened?
 - c) how many cases closed after being passed to the presenting solicitors were later re-opened?
5. On 22 May 2024 the complainant received a response from the public authority asking him to clarify his request.
6. The complainant clarified his request the next day in the following emboldened terms:

"Question 2b Please can you confirm whether you are requesting the number of cases which were closed during the investigation stage.
Yes. I am. I do not understand how the question can be read in any other way.

"Question 3c When cases are first outsourced, they are investigated by the Investigating Officers. Following this stage, should it be decided that there is a case to answer and that the matter should be referred to a Professional Conduct Panel, a case is outsourced for the second time and allocated to Presenting Officers in preparation for a hearing. Please can you confirm whether you are requesting the number of cases closed during the investigation stage as handled by the Investigating Officers, or whether you are requesting the number of cases closed after a case is outsourced to Presenting Officers in preparation for a hearing. Alternatively, you may wish to request figures for both stages.
In question 2b I have already asked for "the number of cases closed during the investigation stage as handled by the Investigating Officers" In question 2c I have already asked for "the number of cases closed after a case is outsourced to Presenting Officers in preparation for a hearing." I have no need to ask these same questions again in 3c. In the whole of question 3 I am asking about cases closed with a decision having been taken not to proceed to a hearing which were later

re-opened and proceeded to a hearing despite having previously been closed. If cases are not re-opened after they have been closed, please tell me this."

7. The public authority responded to the clarified request on 21 June 2024. It refused the request and relied on section 12 of FOIA in order to do so. It upheld this position following an internal review.

Reasons for decision

8. Section 12(1) of FOIA allows a public authority to refuse a request if the cost of identifying the information and then locating, retrieving or extracting that information would exceed a particular limit known as the "appropriate limit."
9. The appropriate limit for this public authority is £600 – the equivalent of 24 hours of staff time.
10. Section 12 does not contain a requirement to consider the balance of the public interest. Either a request exceeds the appropriate limit or it does not.
11. The public authority accepts that it holds this information, but it is scattered within each individual case file. Extracting all the information would require it to search 1,432 case files. It estimates that this would take 10 minutes per case file or approximately 238 hours of staff time in total.
12. The complainant argued that the information could be found much more quickly:

"When a case of teacher misconduct is referred to the TRA, the TRA replies to the referrer. If the case is closed, it tells the referrer this by email. It is therefore very quick and easy to use the email program's search facility to find out which cases have been closed and at what stage. This would answer question 2 of my request. To then discover which cases have been re-opened it is again, very quick and easy to compare the cases identified by this email search with the ones which proceed to a hearing, which would answer my third question."
13. The complainant argued that the information could be found in "at most 30 minutes" and, he believed, had "already been compiled." No evidence was offered in support of either assertion.

The Commissioner's view

14. In the Commissioner's view the request would exceed the cost limit.
15. According to the public authority's [annual report](#), it received a total of 3,280 referrals for teacher misconduct over the period covered by the request. Those referrals led to 1,684 investigations being opened and 510 hearings.
16. Assuming that multiple referrals about the same teacher only count in these stats as a single referral (and investigation, hearing and so on) that implies that 1,596 referrals did not proceed to investigation – which appears to be the answer to part 2a of the request.
17. That leaves a gap of 1,174 instances where an investigation began, but where no corresponding hearing took place. These cases have presumably been closed, either during the investigation, on completion of the investigation or at some point after the case was referred to Presenting Officers in preparation for a hearing, but before the hearing took place.
18. The complainant has argued that this information can be “quickly and easily” found by searching for the corresponding closure emails – but it is not clear why that would be the case.
19. Even if the Commissioner were to assume that every file was closed by email, that every email was still stored on the server (not held in an electronic file management system such as sharepoint) and that the emails were sufficiently standardised that they could be instantly retrieved, it's still not clear that they would contain all the information needed to comply with the request.
20. The Commissioner has not been presented with any evidence that would demonstrate that a referrer is told both that their referral has been closed **and** of the stage at which it was closed. If the emails do not contain this information, then the public authority will still have to search its files in order to comply with the request. At best, it may help the public authority identify the relevant files more quickly. It won't speed up the process of extracting the relevant information from those files.
21. The public authority also has to identify files that have been reopened – presumably by hunting for duplicate closure emails. Given that a case might have initially been rejected during an investigation, re-opened because (for example) new evidence was provided, but closed after being passed to the Presenting Officers, it would not simply be a task, as the complainant suggests, of comparing cases that have been closed with cases that went to a hearing.

22. And, of course, if any of the emails are no longer stored on the email server, the public authority will still have to carry out a manual search of files to ensure that it has located all relevant information.
23. The Commissioner is therefore not persuaded that there is a more efficient way of identifying all relevant information than that which the public authority has suggested.
24. Even at two minutes per file, the time required to extract all the information relevant to the request would exceed the cost limit by a significant amount.
25. The Commissioner is therefore satisfied that the request would have exceeded the appropriate limit and therefore the public authority was entitled to refuse it.

Procedural matters

Advice and assistance

26. When a public authority relies on section 12 of FOIA to refuse a request it must explain to the requester how their request might be refined, such that it would fall within the appropriate limit. Alternatively, it must explain that the request cannot be meaningfully refined.
27. In this case, the public authority suggested it could provide five months' data without exceeding the appropriate limit. That is sufficient to discharge its obligation under section 16 of FOIA.

Seeking clarification

28. The complainant argued that the public authority had failed to meet the timeliness requirements of FOIA because his original request had been made in March, but the public authority's refusal notice was not provided until June.
29. Compounding this problem is a missed communication. The public authority says it sent an email to the complainant on 26 April 2024. The complainant says he never received this email.
30. For reasons that will be explained, it makes no difference to the outcome whether the correspondence was or was not sent to the complainant on 26 April – but the Commissioner has proceeded on the basis that, for whatever reason, the correspondence was not sent.
31. Section 1(3) of FOIA states that a public authority does not have to comply with a request for information if it "reasonably requires" further

information in order to identify and locate the information that has been requested. However, the public authority must inform the requester of the further information that it needs.

32. There is no statutory time limit for the public authority to inform the requester that it requires clarification and the public authority did respond to the clarified request within 20 working days of the clarification being provided. Therefore, the public authority will not have breached the timeliness requirements of FOIA if its request for clarification was reasonable.
33. The complainant argued that the request for clarification was “spurious” and an attempt to delay the request. He argued that his request was not capable of another interpretation and therefore did not require further clarification.
34. The Commissioner is inclined to be more sympathetic. His [guidance](#) explicitly cautions against a public authority “guessing” what the correct interpretation of a request should be. He has also [issued several decision notices](#) finding that public authorities breached their legal obligations because they failed to recognise alternative objective readings of a request.
35. The public authority wished to confirm that it had understood the request correctly. The Commissioner accepts that this clarification could and should have been sought more quickly (he will comment on this under “Other Matters”) but a requirement does not become less reasonable, the longer ago a request was submitted.
36. The Commissioner considers that the phrase “during investigation”, which the public authority used, is clearer than the phrase “on investigation”, which the complainant used. It was not unreasonable for the public authority to check that it understood what information was being sought.
37. In the circumstances of this case, the Commissioner considers that the public authority did reasonably require further information and therefore it was not obliged to comply with the request until 20 working days after that clarification was provided. As the public authority did provide a refusal notice and did confirm that the requested information was held, within 20 working days of receiving the clarified request, it complied with sections 10 and 17 of FOIA.

Other matters

38. As the Commissioner has noted above, there is no statutory time limit for requesting clarification. Nevertheless, as a matter of good practice, he considers that clarification should be sought as soon as possible.
39. The complainant is clearly aggrieved about the delay between submitting his request and receiving his refusal notice. This has been exacerbated by the missed communication of 26 April – meaning he did not realise he needed to clarify his request until two months after it had been submitted.
40. Even if the Commissioner were to accept that the public authority did seek clarification on 26 April, that would have been 19 working days after the request was submitted.
41. Whilst the Commissioner accepts that seeking clarification was reasonable, given the nature of the clarification it should have been sought almost immediately and not one day before the public authority would have been required to respond.

Right of appeal

42. 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

43. 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.
44. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF