

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2025

Public Authority: The Governing Body of Durham University
Address: Stockton Road
Durham
DH1 3LE

Decision (including any steps ordered)

1. The complainant requested information from Durham University ("the University") relating to the income and outgoings of theatre companies and theatres.
2. The Commissioner's decision is that the University is not entitled to rely on section 12(1) (cost limit) of FOIA to refuse to provide information within the scope of 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 does not rely on section 12 of FOIA.
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 5 July 2024, the complainant wrote to the University and requested information in the following terms:

"Firstly, I'd like to know the incomes and outgoings of "Experience Durham's" theatre companies, itemised with things such as income from selling tickets, and from other sources, and so on and so forth over the past two years.

I have located a link via googling to a list of such theatre companies that I am referring to, it's just the "university wide ones" that I am after in this list...
<https://www.durhamstudenttheatre.org/our-theatre-companies/>

Secondly, I would also like to know the incomes and outgoings of "Durham Student Theatre", and the "Assembly Rooms theatre", if you would be so kind..."

6. The University responded on 6 August 2024 and refused to confirm or deny whether it held information within the scope of the request citing section 12(2) (cost limit) of FOIA as its basis for doing so.
7. On 14 August 2024 the complainant requested an internal review. The University provided the complainant with the outcome of its internal review on 9 September 2024 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 17 September 2024 to complain about the way their request for information had been handled. They stated that they do not consider the University to have correctly applied section 12(2) of FOIA to their request.
9. During the course of the Commissioner's investigation the University revised its position. It confirmed to the Commissioner that it holds information within the scope of the request but stated that it is relying on section 12(1) (cost limit) of FOIA to refuse to provide that information.
10. Therefore, in this notice the Commissioner will cover whether the University is entitled to rely on section 12(1) of FOIA to refuse to provide information within the scope of the request.

Reasons for decision

Section 12(1) – cost of compliance exceeds the appropriate limit

11. 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 cost limit.

12. The appropriate limit for public authorities such as the University 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.
13. 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. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency* EA/20017/00041, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.
15. 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.

The University's position

16. In its submissions to the Commissioner, the University stated that in order to determine what information it holds within the scope of the request and locate that information it would need to carry out extensive searches of 19 individual theatre accounts in its new Oracle Fusion finance system, its previous finance system, and its Xero system. The University explained that it would need to search the three systems for information relating to bank reconciliations, trail balances and VAT returns.
17. The University explained that in order to extract information within the scope of the request, it would need to identify the income stream that funds have been received from, for example if funds have been obtained from tickets sales. It stated that if any payments have not already been allocated to a particular review stream, those payments and any notes

relating to them would need to be reviewed to establish what they were for.

18. The University estimates that for each theatre account, it would take approximately 90 minutes to carry out the activities outlined above. It stated that this estimate is based on a monthly process of extraction for 125 accounts. Therefore, the University has calculated that in total, it would take approximately 28.5 hours to provide the requested information (19 theatre accounts x 90 minutes = 28.5 hours).

The Commissioner's position

19. The Commissioner notes that the University has stated that in order to provide the requested information, it would need to search its Oracle Fusion finance system, its previous finance system and Xero system for information relating to bank reconciliations, trail balances and VAT returns. However, he considers that the University has not explained why information relating to bank reconciliations, trail balances and VAT returns is relevant to the request.
20. Furthermore, the Commissioner recognises that the University has estimated that per theatre company, it would take approximately 90 minutes to determine whether information is held within the scope of the request, locate that information and then extract it. However, as the Commissioner understands it this estimate is not based on a sampling exercise but rather a monthly process of extraction for 125 accounts.
21. Based on the University's submissions, it is unclear to the Commissioner how the monthly process of extraction is equivalent to a sampling exercise as the University has not explained what the monthly process of extraction is or what it involves. The Commissioner considers that when providing its cost estimate, the University should have provided a breakdown of the monthly extraction process and explanation of the time/costs associated with each step of the process.
22. Therefore, whilst the Commissioner acknowledges that the University has provided an estimate of the costs associated with complying with the request, he does not consider that estimate to be reasonable. His decision is that the University is not entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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