

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2019

Public Authority: The Council of the University of Cambridge
Address: University Offices
The Old Schools
Trinity Lane
Cambridge CB2 1TN

Decision (including any steps ordered)

1. Cambridge University Press ('the Press') is the publishing business of the University of Cambridge. Although it is operationally separate from the Academic University – having its own executive board, HR, IT, legal and finance departments – it is not corporately separate from the University (eg a trading subsidiary). As such, although this decision notice is served on the Council of the University of Cambridge, it concerns the Press and the Press is discussed throughout.
2. In a multi-part request, the third in a series, the complainant has requested information about particular publishing matters from the Press. The Press aggregated this request with the complainant's second request and maintains that it is not obliged to comply with the request under section 12(1) of the FOIA (cost exceeds appropriate limit). The Press did, however, volunteer some information that addressed some parts of the request.
3. The Commissioner's decision is as follows:
 - The Press is entitled to aggregate the costs of complying with the complainant's requests under section 12(1) and to refuse to comply with the current request.
 - The Press provided the complainant with sufficient advice and assistance to meet its duty under 16(1) of the FOIA.

- The Press did not breach section 17(7)(a) of the FOIA, which concerns refusing a request.
4. The Commissioner does not require the Press to take any remedial steps.

Request and response

5. On 30 August 2018 the complainant wrote to the Press and requested information in the following terms:

"(1)(a) I would like the name of the book referred to in the response ("the only other case").

(b) I would like a list of all titles published by CUP within the last 5 years for which there was (partial) suspension of sales but not of distribution (e.g. there was continued fulfilment of electronic sales), with the corresponding dates provided.

(2)(a) I would like to know what actions were taken after receipt of the book manuscript on 20/10/2016 to referee/review Chapters 16 to 19, such as sending the material to external peer reviewers before publication, and to know on what dates these chapters were sent out to external peer reviewers. If the material was not sent out to external peer reviewers, please confirm so.

(b) I would like to be given all corresponding external peer review reports that cover Chapters 16 to 19, and to know the dates on which these reports were received. If no such reports exist, please confirm so.

(3) Please send me the following documents that CUP received from the book author:

(a) All statements by the book author received prior to publication that declare what third party material is contained in the book, both those that related to my own publications and those relating to others (including the book author), and any documents held that confirm that appropriate permissions had been obtained.

(b) The sections (including any relevant references) of the book proposal that concern the material in chapters 16 to 19, i.e. concerning solutions of topologically massive gravity.

(c) The draft manuscript that was received by CUP on 20/10/2016.

(d) The final draft manuscript that was received by CUP on 28/12/2016.

(4) I would like information on what agreements were negotiated between CUP and other publishers concerning the purchase of usage rights for the book, both relating to my own publications and those relating to others (including the book author), and I would like to see these agreements.

(5) I would like information on the following:

(a) What are CUP's general procedures for reviewing and editing submitted book manuscripts to ensure that they do not infringe intellectual property rights and are of sufficiently high scholarly quality to be published? In addition to internal review, are certain criteria used to determine if there is also external peer review?

(b) How were these general procedures applied for this particular book?

(c) Who read the book manuscript after receipt of the manuscript on 20/10/2016 and before publication? I would like all documented comments on the quality of the book manuscript by those who read it, with dates provided.

(6) I would like detailed information on what editing was carried out on the manuscript after submission. If available, I would ideally like manuscripts that are annotated to indicate the edits; otherwise, if available, any separate documents listing edits made. Should these not be available, I would like the manuscripts (as already requested above), from which I can deduce what editing was carried out.

The reason that I am asking is to see how detailed the editing process was for the book, to gain an overall picture of the amount of care taken by CUP in publishing the book.

(7) I would like information on how the books listed below (all titles in the Cambridge Monographs on Mathematical Physics book series published in the last few years) were reviewed after CUP received the first draft of the book. To be clear, I am referring only to reports received prior to publication, based on a draft manuscript of the book that is substantially similar to the final published version, not based on a very different book proposal.

In particular, for each title, I would like to know if such review was performed internally only, or if the manuscript received external peer review reports, with the dates that any external peer review reports

were received. If you are able to release any external reports, I would like to read them. The titles requested are:

"Topological and Non-Topological Solitons in Scalar Field Theories" by Yakov M. Shnir

"Quantized Detector Networks: The Theory of Observation" by George Jaroszkiewicz

"The Theory and Applications of Instanton Calculations" by Manu Paranjape

"The Cosmological Singularity" by Vladimir Belinski and Marc Henneaux

"Exact Solutions in Three-Dimensional Gravity" by Alberto A. García-Díaz

"Supersymmetry, Supergravity, and Unification" by Pran Nath

"Hadrons at Finite Temperature" by Samir Nath Mallik and Sourav Sarkar

"Particle Physics of Brane Worlds and Extra Dimensions" by Sreerup Raychaudhuri and K. Sridhar

"Inflation and String Theory" by Daniel Baumann and Liam McAllister

"Gravity and Strings," 2nd edition by Tomás Ortín

"Principles of Discrete Time Mechanics" by George Jaroszkiewicz

"Boundary Conformal Field Theory and the Worldsheet Approach to D-Branes" by Andreas Recknagel and Volker Schomerus

"Mathematics of Quantization and Quantum Fields" by Jan Dereziński and Christian Gérard

"Rotating Relativistic Stars" by John L. Friedman and Nikolaos Stergioulas

"Classical Solutions in Quantum Field Theory: Solitons and Instantons in High Energy Physics" by Erick J. Weinberg

The reason that I am asking is to find out what CUP does in practice to review books: whether it is standard practice to perform only internal review or whether external peer review is standard practice.

(8) I would like the following information concerning the General Editors:

(a) Who, since 2016, have been the General Editors of the Cambridge Monographs on Mathematical Physics?

(b) What responsibility for or involvement with the book do they have or have they had?"

6. The Press responded on 27 September 2018. It refused to comply with the request under section 12(1) of the FOIA. It went on to explain that it had aggregated this request with a previous request from the complainant that it had received on 16 July 2018. The Press said that, as permitted under Regulation 5 of the Fees Regulations, it was taking the estimated cost of complying with the current request to be the total costs of complying with both of them. It advised that these two most recent requests were received within a period of 60 consecutive working days and that they both related to the same or similar information.
7. The Press said that, in line with its duty under section 16(1) to provide advice and assistance, it had answered some of the complainant's questions where it was able to do this straightforwardly; namely parts 2, 4, 5 and 8.
8. The complainant requested an internal review on 22 November 2018. Following its review the Press wrote to the complainant on 11 December 2018. It maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 10 March 2019 to complain about the way his request for information had been handled. In correspondence to the Commissioner on 29 July 2019, the complainant outlined the scope of his complaint. He confirmed that he had received satisfactory responses to parts 2(a), 2(b), (4), 5(a), 5(b), 5(c), 8(a) and 8(b) of his request. In responses to subsequent requests from the complainant, the Press had, the complainant said, provided a satisfactory response to revised versions of parts 3(a) and 7 of the 30 August 2018 request. The complainant said that in one of these later responses, the Press had provided a response to part 3(b) of the 30 August 2018 request.
10. The complainant confirmed that he considers the Press has not provided satisfactory responses to parts 1(a), 1(b), 3(c), 3(d) and 6 of his 30 August 2018 request. He also considers that the Press has not complied

with section 16(1) or section 17(7) and did not follow the section 45 Code of Practice with regard to aspects of its handling of his request.

11. In his correspondence, the complainant has also discussed responses he received to later requests he submitted to the Press. This notice can only concern the complaint submitted to the Commissioner on 10 March 2019 concerning the request of 30 August 2018.
12. The Commissioner's investigation has focussed on whether the Press can rely on section 12 of the FOIA to aggregate the complainant's requests and to refuse to comply with the 30 August 2018 request in its entirety. She has also considered whether it complied with section 16 and section 17.
13. The matter of the Press' adherence or otherwise to the section 45 Code of Practice is considered under 'Other Matters' as the Commissioner cannot make a formal decision on these aspects of the complaint.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

14. Section 12(1) says that a public authority is not obliged to comply with a request if the authority estimates it would exceed the appropriate cost limit to do so.
15. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Press.
16. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
17. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") can be satisfied.
18. The effect of the provisions under section 12(4) of the FOIA and regulation 5(2) of the Fees Regulations mean that a public authority

may aggregate the cost of complying with two or more requests if the following three criteria are met:

- the requests are made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign
 - two or more requests relate, to any extent, to the same or similar information; and
 - the requests were received by the public authority within any period of 60 consecutive working days.
19. Having considered the current request and the nature of request 2 as detailed in the table the Press supplied, the Commissioner is satisfied that there is an overarching theme in that they all request information directly relating to particular publishing matters. Since both requests were also made within a 60 working day period, the Commissioner therefore finds that the Press was entitled to rely on section 12(4) of the FOIA to aggregate the earlier request with the one currently under consideration here.
20. In its submission to the Commissioner, the Press has told her that its estimate of the time to respond to the complainant's request of 30 August 2018 is between 28.5 and 43.5 hours. The Press provided her with a table showing the actions that it would need to take to comply with each of the eight parts of the request, and an estimate of how long it would take to carry out each of these actions. These vary from one to three hours for the majority of the parts of the request and between 15 and 30 hours to comply with part seven.
21. The Press explained that although none of the individual items is in itself excessive, it is the multiplicity of the requests (including under part seven; the fifteen books to which the request relates) which causes the overall time estimate of 28.5 - 43.5 hours. The Press says that although it could have advised the complainant to remove part seven of the request, or to reduce the number of books enquired about under this part, it was also mindful of the complainant's previous request and the time taken to deal with it.
22. The Press has confirmed that this was the third request it had received from the complainant, with the second received on 16 July 2018. It says that it believes it was entitled to aggregate the estimated time required to deal with the current request with the time taken to deal with the second request of 16 July 2018. This is because the requests were received within 60 working days of each other and the request of 30 August 2018 was directly linked to the earlier request. The Press

says the complainant's email to it of 30 August 2018, which contained the request, purported to ask questions 'clarifying' the previous request but that, in truth, it simply substantially added to the requests already made.

23. In second table provided to the Commissioner, the Press has broken down the actions needed to comply with the six parts of the complainant's second request of 16 July 2018; and a time estimate for carrying out those actions of 12.5 hours.
24. The Press has drawn the Commissioner's attention to correspondence it sent to the complainant on 24 October 2018, in which it confirmed the position that has been detailed above.

Conclusion

25. The Commissioner finds that the Press was entitled to aggregate the current, third, request with the previous request submitted by the same complainant; they were both submitted within a 60 working day period and there is an overarching theme.
26. The Commissioner has considered the Press' time estimates, and the breadth of the complainant's requests, and finds the estimates to be credible. She finds that the 18 hours cost limit provided for by section 12 FOIA had been exceeded by the Press in responding to the second request and she is satisfied that the current request also falls into the overarching theme.
27. Having reached the above conclusions, the Commissioner therefore finds that the Press was not obliged to respond to the current request by virtue of section 12(1).

Section 16 – duty to provide advice and assistance

28. In correspondence to the Commissioner the complainant argues that, because the Press subsequently provided what he considers to be satisfactory responses to, for example, parts 3(a), 4 and 7 of the 30 August 2018 request, it was wrong to claim that it could not, at the time of the request, provide him with advice and assistance.
29. The Commissioner notes that the complainant had advised the Commissioner that he had subsequently revised requests 3(a) and 7 (paragraph 9) – these would have been, in effect therefore, new requests. As also detailed in paragraph 9, the complainant had also advised the Commissioner that he was satisfied with the answer to part 4 of the 30 August 2018 request that the Press had volunteered in its response to that request. The Commissioner has nonetheless gone on

to consider whether the Press complied with its duty under section 16 of the FOIA.

30. Under section 16(1), a public authority has a duty to provide an applicant with advice and assistance, so far as it would be reasonable to expect the authority to do so.
31. The section 45 Code of Practice¹ advises that where an authority is relying on section 12, it should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, it may be able to supply information for a lower, or no, fee.
32. The Commissioner's view is that, where a public authority refuses a request under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
33. The Commissioner's guidance states that where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:
 - either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit; and
 - provide advice and assistance to enable the requestor to make a refined request.
34. The Commissioner understands that the Press did not cite section 12 in relation to the previous request of 16 July 2018 as it complied with that request. Therefore, there were no section 16 obligations in relation to that request.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

35. With regard to the current request, the Press indicated to the complainant in its refusal notice, its internal review and its correspondence of 24 October 2018 that it was not able to provide any information at all within the appropriate limit. It had given narrative responses to some of the complainant's questions but had done this voluntarily.
36. In its submission to the Commissioner, the Press has noted that the third request added substantially to requests the complainant had already made. It says that it was for this reason, in particular, that it felt it was difficult to reformulate the third request in such a way as to reduce the overall time taken to within the appropriate limit under section 12.
37. The Press says that it had had regard to section 16 in insulating and responding to parts of the complainant's extensive request which could be properly responded to more swiftly. It argues that section 16 did not require it to take that step; that it could have advised the complainant to re-submit a narrowed request which asked only the questions that the Press would be able to answer in a reasonable period.
38. Finally, the Press noted that although it based its refusal notice on section 12(1), it also had in mind the possible application of section 14(1) of the FOIA (vexatious request) or the application of the substantive exemptions in Part II of the Act to particular information the complainant has requested. The Press says that there seemed to be little benefit in recommending an approach to the complainant that would have reduced the number of hours required to handle the request, only then to refuse the revised the request on other grounds. It had explained this to the complainant in its correspondence of 24 October 2018.

Conclusion

39. Having considered all the circumstances, the Commissioner finds that the Press did not breach section 16(1) of the FOIA. In line with her guidance the Press indicated to the complainant that it would not be able to comply with the request, ie provide any information, within the cost limit, but it answered some of the complainant's questions where it could do so easily. As such, the Commissioner is satisfied that the Press provided the complainant with such advice and assistance that was reasonable in the circumstances.

Section 17 – refusing a request

40. The complainant has told the Commissioner that he considers that the Press breached section 17(7)(a) of the FOIA. This is because it failed to indicate that a request for an internal review should be submitted within 40 working days.
41. Section 17(7)(a) of the FOIA says that in cases where a public authority is refusing a request, its refusal notice must contain particulars of any procedure provided by the authority for dealing with complaints about the handling of requests for information, or state that the authority does not provide such a procedure.

Conclusion

42. Section 17(7)(a) does not mention that an authority should advise the applicant of any time scale with regard to requesting an internal review. As such, the Commissioner finds that the Press did not breach section 17(7)(a) or, indeed, section 17(1) which requires an authority to provide a refusal notice within 20 working days of receiving a request.

Other matters

43. The section 45 Code of Practice is just that, a code of practice. The Commissioner therefore cannot make any formal decision on whether or not an authority has followed the Code. She has, however, considered here points the complainant has raised that concern the Code of Practice.
44. With regard to the matter of the Press' refusal of the complainant's request, the complainant has criticised the Press for not advising him that he should request an internal review within 40 working days. He says that the recommended time period of 40 days is "implied" in the section 45 Code of Practice. The Commissioner notes that paragraph 5.3 of the Code of Practice advises that it is usual practice to accept a request for an internal review made within 40 working days. It does not advise an authority to advise an applicant of this timeframe. Paragraph 10.2 of the Code – to which the complainant has also drawn the Commissioner's attention – makes no mention of any timescales. The Commissioner therefore finds that the Press has no case to answer in that regard.
45. The complainant also considers that the Press did not follow paragraph 5.4 of the Code because it did not acknowledge his request for an internal review or communicate with him about the review prior to providing him with it.

46. The complainant requested a review on 22 November 2018 and the Press provided a review on 11 December 2018. From the material provided to her, the Press does not appear to have acknowledged the request for a review. Ideally it could have but, as discussed, the Code of Practice outlines voluntary best practice. Since the Press provided a review within 20 working days of a request for one, the Commissioner has no concerns about this aspect of the Press' handling of the request.

Right of appeal

47. 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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

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