

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2022

Public Authority: Christ Church College, University of Oxford
Address: St Aldate's
Oxford
OX1 1DP

Decision (including any steps ordered)

1. The complainant requested information from Christ Church College, University of Oxford (Christ Church) regarding the amount of money spent on the action against the Dean of Christ Church for the period April 2020 to April 2021. Christ Church refused to comply with the request citing section 12 (cost limit) of the FOIA.
2. The Commissioner's decision is that Christ Church was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA. He also finds that Christ Church met its obligation under section 16(1) of the FOIA to offer advice and assistance. The Commissioner does not require Christ Church to take any steps.

Request and response

3. On 14 April 2021 the complainant wrote to Christ Church and requested information in the following terms:

"Further to my previous request, what is the amount of money spent by Christ Church on the action against the Dean, including legal fees, tribunal costs, expert advice (legal and otherwise), Public Relations expenditure, and any other related spend for the period April 2020 to April 2021."
4. On 11 May 2021 Christ Church responded citing section 12 of the FOIA as the basis upon which to withhold the information requested. This position was upheld on internal review on 9 June 2021

Scope of the case

5. The complainant contacted the Commissioner on 28 June 2021 to complain about the way his request for information had been handled. The complainant disagrees with Christ Church's application of section 12 of the FOIA.
6. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12 of the FOIA in response to this request. The Commissioner has also considered whether the public authority met its obligation to offer advice and assistance, under section 16 of the FOIA.

Reasons for decision

Section 12 – cost of compliance

7. Section 12(1) of the 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").
8. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. Christ Church relied on section 12(1) in this case.
9. 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 Christ Church is £450.
10. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for Christ Church to deal with this request.
11. Regulation 4(3) of the Fees Regulations states that 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.
12. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “*sensible, realistic and supported by cogent evidence*”. 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.
13. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.
14. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Would the cost of compliance exceed the appropriate limit?

15. As is the practice in a case in which the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked Christ Church to provide a detailed explanation of the estimation it had reached to calculate the time and cost of responding to the request.
16. Initially Christ Church did not provide a satisfactory explanation of its calculations of the time and cost of responding to the request but instead referred to an estimation exercise carried out in relation to a prior and very similar request from the complainant regarding the amount spent by Christ Church on the action against the Dean for the previous year, April 2019 to April 2020.
17. The Commissioner pressed Christ Church for a response regarding the estimation exercise carried out specifically for this request and Christ Church did then provide a more detailed explanation of its estimations as regards costs incurred on the action against the Dean for the period April 2020 to April 2021.

18. In its submission to the Commissioner Christ Church stated that to comply with the request it would need to review the invoices of three firms of solicitors and a PR agency. Christ Church also uses a fourth firm of solicitors and would need to check whether any of their work was in scope (but believe it may not be in scope). Christ Church would need to conduct manual reviews of the invoices as the information requested by the complainant is not held in an easily retrievable format.
19. Christ Church explained that the solicitors' firms and PR agency advise on a range of matters and their invoices do not relate solely to the action against the Dean of Christ Church. Therefore, to respond to the request Christ Church would need to review the narrative in each of the invoices of each firm to determine whether an invoice included work carried out in respect of the action against the Dean and then extract only the costs relating to the Dean. Christ Church stated that there were 37 invoices falling within scope which consisted of 138 pages and 1,469 narrative entries. These would all need to be reviewed manually as described above. This does not include the invoices of the PR agency or one of the three solicitors' firms in scope because of the way in which they invoice Christ Church. The solicitors' firm in question and the PR Agency would have to provide further and more detailed particulars before Christ Church could undertake the review.
20. Christ Church confirmed that it had performed a sampling exercise using three invoices from one of the solicitors' firms chosen at random. Christ Church explained that one of the invoices sampled contained over 100 narrative entries relating to a range of legal matters and was not the longest invoice received for the period April 2020 to April 2021. Christ Church stated that it took one hour and 37 minutes to conduct an initial sift of the three invoices and estimated that it would take another hour to go through the detailed narratives and extract any costs relating solely to the action against the Dean.
21. Based on its sampling exercise Christ Church estimated that reviewing and extracting the relevant information from three invoices would take, on average, around two and a half hours. Christ Church explained that two of the solicitors' firms provided lengthy detailed monthly invoices. Another of the solicitors' firms had invoices which were more likely to be in scope and would take less time to review. Christ Church estimated 10 hours to review that particular firm's invoices. Christ Church explained that the fourth solicitors' firm were less likely to have invoices falling within the scope of the request and less narrative detail and would take an estimated one hour to review. As regards the invoices of the PR agency, Christ Church explained that because of the way its invoices are presented, it would take approximately 10 hours for the PR Agency to review its records and allocate the time spent to various PR issues and then extract the costs relating solely to the Dean.

22. Based on the number of invoices to review for the period April 2020 to April 2021 and the work required to extract and collate the information in scope, Christ Church estimated it would take over 32 hours to comply with the request which is significantly in excess of the set limit of 18 hours under the FOIA for a non-government department.
23. Christ Church also explained that it had carried out a similar exercise for the year April 2019 to April 2020 when it had to provide information to the Charity Commission regarding the amount spent on action involving the Dean. In order to provide the information to the Charity Commission the solicitors' firms and PR agency went through each of the narrative entries on their fee recording systems to establish whether the fees were in scope. Christ Church therefore have independent evidence that it took significantly more than 18 hours to collate the amount spent on action against the Dean in the year April 2019 to April 2020. Christ Church have stated that a similar amount of legal and PR work has been carried out in respect of the action against the Dean during April 2020 to April 2021 as in the previous year. In response to the request for the year April 2020 to April 2021 Christ Church asked its advisers how long the same exercise would take based on the amount of work they had carried out during April 2020 to April 2021. One firm advised it would take the same or slightly more time, whilst the other thought it would take a longer period of time due to the nature of the request, the nature of their invoicing and the need to cross check what was in and what was not in scope.
24. The Commissioner considers that, even considering a more conservative cost estimate of only two hours to review and extract relevant costs from three detailed invoices, Christ Church would still take more than the 18 hours / £450 limit to respond to the request. The Commissioner accepts the explanation that it would have been necessary for Christ Church to review the narrative of each invoice in order to locate and extract the information it held within the scope of the request.
25. The Commissioner's overall conclusion is that Christ Church has estimated reasonably that to comply with the complainant's request would exceed the cost limit. Christ Church was therefore correct to apply section 12(1) of the FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

26. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

27. The Commissioner notes that on 11 May 2021 Christ Church explained to the complainant that *"the time required to comply with your requests could be significantly reduced if they were constructed differently or were more time limited"*.
28. The Commissioner considers this was an appropriate response in the circumstances given the broad nature of the original request. He is therefore satisfied that Christ Church met its obligation under section 16 of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

29. 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

30. 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.
31. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
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