

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 June 2025

Public Authority: The Governing Body of the Wiltshire College & University Centre

Address: Cocklebury Road Chippenham
Wiltshire
SN15 3QD

Decision (including any steps ordered)

1. The complainant has requested external examiner reports for all taught higher education courses between 2019 and 2023. The Governing Body of the Wiltshire College & University Centre ("the College") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the College was not entitled to rely on section 12(1) of FOIA to refuse the request.
3. The Commissioner requires the College to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response that does not rely on section 12 of FOIA.
4. The College 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 14 October 2024, the complainant wrote to the College and requested information in the following terms:

"Under the Freedom of Information Act 2000, I am requesting the external examiner (or similar) reports for the following academic years

for all taught HE courses:

2019

2020

2021

2022

2023

I understand that such reports are often made available to students via internal VLEs (Virtual Learning Environments) or repositories. As these reports are already accessible to a wide, non-controlled audience within the institution, I believe that concerns regarding commercial sensitivity or protection under the FOIA should not apply.

Should any redactions be necessary to protect sensitive personal information or other exempt material, I request that these be clearly marked in accordance with Section 16 of the FOIA, which outlines the public authority's duty to provide advice and assistance. I am particularly interested in the content of the reports, and any personal information or specific details that require protection can be redacted as appropriate.

Thank you for your time and attention. I look forward to your response within the statutory timeframe."

6. On 18 November 2024, the College responded. It relied on section 12 of FOIA to refuse the request – a position it upheld following an internal review.

Reasons for decision

Section 12 – cost of compliance

7. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
8. 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")
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 the College 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 the College.
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. 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 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 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 FOIA.

The College's position

15. The College explained to the Commissioner that providing the requested information would be too costly and time consuming as it contains personal details of students which would need to be redacted.
16. The College advised that for each of the five academic years in question, there is an examiner's report for each course it ran. It explained on average it ran around 23 courses each year. This would therefore total approximately 115 reports which would need to be reviewed and redacted.

17. The College explained that it believed reviewing and redacting each report would take approximately 30 minutes per report.
18. The College explained that at a rate of 30 minutes per report, this would take approximately 57.50 hours and cost approximately £1437.50. It stated that this considerably exceeds the allowable cost limit.
19. The Commissioner contacted the College and explained that the cost of redaction cannot be included when applying section 12 to a request. This point had already been made to the College by the complainant in his internal review request. Public authorities may include the cost/time spent for redactions if applying section 14 of FOIA on the grounds of burden, but would need to justify fully any estimates were they to rely on this exemption.
20. The College advised subsequently that it considered it would take approximately 15 minutes to prepare each report.
21. The College advised that based on the above, complying with the request would now take approximately 28.75 hours and cost £718.75, which still exceeds the cost limit.

The Commissioner's view

22. The Commissioner is not satisfied that complying with this request would exceed the appropriate limit.
23. The College has failed to explain what work is entailed to "prepare the requested information", and why it would take 15 minutes per report. The College was also unable to provide any details regarding any new sampling exercise it undertook for the new estimate it provided, despite the Commissioner's asking for these further details. The lack of justification offered by the College leaves the Commissioner unable to verify their claims with any certainty.
24. Due to the above, the Commissioner cannot agree that complying with the request would therefore exceed the cost limit and so the College was not entitled to rely on section 12(1) of FOIA to refuse the request.
25. The College must now issue a fresh response to the request.

Other matters

26. The Commissioner would like to take this opportunity to remind the College that it should be providing timely responses to the Commissioner during any investigation.

Right of appeal

27. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF