

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2020

Public Authority: The Governing Body of Bilborough Sixth Form College

Address: Bilborough College
College Way
Nottingham
NG8 4DQ

Decision (including any steps ordered)

1. The complainant has requested information about assistance dogs from Bilborough Sixth Form College (the "college"). The college refused to provide this information citing section 12(1) and section 14(1) of the FOIA. Whilst it subsequently withdrew its reliance on section 14(1), the college continued to cite section 12(1) for the first part of the request. Later, the college confirmed that it did not hold any information regarding the second part of the request.
2. The Commissioner's decision is that the college has correctly cited section 12(1) and that, on the balance of probability, it does not hold the information requested in the second part of the request. However, she considers that the college has not complied with its obligations under section 16 of the FOIA to provide the complainant with reasonable advice and assistance. The Commissioner notes that the response was provided outside the statutory 20 working day time limit and therefore the college has breached section 10(1) of the FOIA.
3. The Commissioner does not require any steps to be taken because the college provided advice and assistance to the complainant during the Commissioner's investigation.

Request and response

4. On 16 March 2019 the complainant made the following request for information under the FOIA for the following:

'As a "Freedom of Information" can I have all data, emails, letters etc., where assistance dog have been mentioned internal and external and can I have a copy of your PCP's on assistance dogs. Thank you.'

5. The college responded on 23 July 2019 and confirmed that it did hold some information but refused to provide the requested information, citing the following – section 12(1)(cost of compliance) and section 14(1)(vexatious requests).
6. On 26 July 2019 the complainant requested a review.
7. The college did not provide an internal review at that time.
8. After the complainant contacted the Commissioner the college responded on 6 December 2019 with an internal review. In the review the application of section 14(1) was withdrawn but the review upheld the earlier citing of section 12(1).
9. After further communications from the Commissioner, the college confirmed to the complainant on 30 December 2019 that it was continuing to rely on the application of section 12(1) for the first part of the request and offering advice and assistance. This letter also confirmed that the college did not hold the information she had requested regarding PCPs on assistance dogs, making the assumption that this meant provision, criterion or practice. The college provided a link to its equality and diversity policy.

Scope of the case

10. The complainant contacted the Commissioner on 26 June 2019 to complain about the way her request for information had been handled.
11. The Commissioner considers that the scope of this complaint is the college's application of section 12(1) to the first part of the request and establishing whether the college holds any information in relation to the second part of the request.

Reasons for decision

Section 1 – general right of access to information held by public authorities

12. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled-

(a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

13. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided). The Commissioner determines this by asking a series of questions concerning what searches have been made and the business needs and/or statutory requirements to hold such information.
14. Firstly, to provide some useful contextual background the college explains that a 'provision criterion or practice' is a legal term that is set out in section 20(3) of the Equality Act 2010 and is applicable to indirect discrimination cases. In other words, a PCP is a rule or requirement which, when it is applied to all, puts certain individuals at a disadvantage and can therefore be regarded as indirect discrimination. The college states that a PCP is not a document as no organisation would have a policy or procedure on how to discriminate against somebody. A public body would not hold PCPs on assistance dogs and it would never implement PCPs in relation to assistance dogs. The college has explained this to the complainant and directed her to the college's Equality and Diversity policy which is available on the college website and invited her to request copies of any other policies or procedures she might require.
15. The college responded to the Commissioner's questions regarding what searches it had carried out. It had already determined that it did not hold any information regarding PCPs on assistance dogs, the college did not carry out checks on information that would not be held for the reasons stated in the paragraph above. However, it did search for any information that would constitute rules and regulations relating to assistance dogs. The types of documents that were considered applicable to the request and for which a search was made were –
- Policies and procedures relating to staff and students;

- Staff contracts;
 - Staff handbooks; and
 - The student agreement.
16. The college was able to review its policies and procedures by involving staff with specific responsibilities for maintaining the policies and implementing the practices in those policies. None of these policies or procedures contain any reference to assistance dogs. The Director of Human Resources confirmed that neither staff contracts nor the staff handbook contain any reference to assistance dogs. The Assistant Principal confirmed that the student agreement which consists of only two sides of A4 does not mention assistance dogs.
17. The college outlined the roles of the individuals involved in reviewing and searching for any information held – the Principal, Assistant Principal and Head of Student Support Services, Director of Human Resources, the Premises Manager and members of the Estates Team (with responsibility for health and safety/risk assessments), the Learning Support Manager and members of the Learning Support Team (who have responsibility for students with additional needs). Those conducting the searches were staff who would be aware of any rules/regulations relating to assistance dogs.
18. As previously stated, the college does not hold PCP documents for the reasons given in paragraph 14. However, the college considers that it carried out adequate searches for any policies that might have contained information relating to assistance dogs. All the areas searched as set out in paragraph 15 are held electronically and were searched accordingly. Paper copies of student agreements, for example, are destroyed once they have been scanned onto the student's electronic record.
19. The college confirmed that it had never held any recorded information within the scope of the second part of the request - PCPs on assistance dogs. Consequently it could not have been deleted or destroyed. The college does not have a retention period for policies and procedures as they do not constitute personal data. Policies are reviewed and revised, as required by the nature of the policy, and in accordance with legislative or educational guidance requirements. There is no statutory requirement to retain this information for the reasons already given.

The Commissioner's view

20. The college has conducted thorough searches to establish whether it holds the specific information requested in the second part of the request. The Commissioner accepts that the college does not hold the information that falls within its scope for the reasons provided. This has

not prevented the college from searching for related information not specifically within the scope of the request for PCPs. In doing so a thorough search was conducted for any policy, rule or regulation that held information about assistance dogs.

Section 12 – cost of compliance exceeds the appropriate limit

21. The college cited section 12 for the first part of the request:

"...can I have all data, emails, letters etc., where assistance dog have been mentioned internal and external..."

22. Section 12(1) of the FOIA states that:

"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

23. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of the college. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:

- determining whether it holds the information;
- 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.

24. 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 IC & Medicines and Healthcare*

Products Regulatory Agency EA/2007/0004, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.¹

The complainant's view

25. The complainant believes that it should be possible for the college to provide the information she has requested in the first part of her request within the fees limit. Her view is that she has been provided with this information from other public authorities previously and does not accept that an electronic search could not be carried out using key search terms.

The college's view

26. The college provided a detailed breakdown under different headings to the complainant setting out the reasons why her request exceeded the fees limit.

27. Firstly, the college explained that it had approximately 1800 students and 200 staff, a total of 2000 users on its network. Searches for the requested emails would need to be carried out on 2000 email inboxes entailing a list of actions to be carried out by a member of the IT team who had administration rights. The actions were listed as follows:

- Assign themselves permission to access a third-party mailbox.
- Access the mailbox.
- Conduct searches for "assistance dog"/"dog" or similar.
- Review search results.

28. The college explained that the IT team carried out sample testing excluding the final stage of review which according to the college varies enormously in the volume of positive matches. It took 45 minutes to update permissions, access a mailbox and conduct searches 10 times. This was an average of 4.5 minutes per mailbox. Accessing the mailboxes and conducting searches without reviewing the results would therefore take 150 hours for 2000 users.

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<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf> (para 12)

29. The college then outlined its document management system with regard to the requested letters. Document Logistix is used as a storage/retrieval system for letters, proforma, application forms etc. and there are in excess of 180,000 documents stored in this system. The college explains that, although documents can be searched by file name and file type, it is not possible to search for specific terms within a document because each document is stored as an image.
30. The college also carried out a review, using a list of all document types within the system and a reasoned judgement made as to whether it was possible/likely for such a document to contain the phrase "assistance dog" or similar. This work took 1.5 hours. It was concluded that the following types of document could meet the criteria and would require further review to confirm whether they contained the phrase "assistance dog" or similar:
- Student application and Enrolment forms (where a statement made could include the search criteria).
 - School reference (where a reference could include the search criteria).
 - Staff application forms (where a potential employee could state the search criteria within their application).
 - Miscellaneous correspondence.
31. The following numbers of documents required review and the college pointed out that they were not single pages:
- Student application and Enrolment forms 31,487 documents
 - School reference 21,587 documents
 - Staff application 970 documents
 - Miscellaneous correspondence 12,541 documents
32. In order to establish whether the information requested exists in a letter held by the college certain actions would need to be undertaken:
- Conduct a search within the Document Logistix system to retrieve documents of the required type (e.g. student application forms, school references etc.)
 - Select a document from the list.

- Read the appropriate sections of the document looking for the term "assistance dog".
- Close the document.
- Open the next document in the list.
- Repeat the process.

The college further explains that if the document did contain the term "assistance dog" a copy would need to be taken. Then this entire process would need to be carried out for the four types of document identified as potentially containing the search criteria. The total number of documents falling into the search criteria is in excess of 66,000 and many of these contain more than 20 pages. One member of staff conducted a sample and was able to search and review 31 documents in an hour. The college suggests that completing the task would take a minimum of 2,129 hours.

33. The college explains that it also has data stored in a student records system. In order to conduct a search of the database date reports would have to be written and electronic searches carried out on the reports that resulted. As a minimum, reports would be required to be written to extract information from the following classes of data:

- Student application data notes.
- Student application data miscellaneous data.
- Student application data disability/health issues.
- Student enrolment data – notes.
- Student enrolment data - learning support data.
- Student enrolment data - statutory health declarations.
- Student personal data – health.
- Student personal data – disability.
- Student log data.
- Parent messages.
- Staff-generated messages.
- Student-generated messages.

An electronic search would have to be carried out for each of the above categories, 12 times in total. Writing a report and undertaking a search takes approximately 20 minutes, four hours work in total.

34. The college states that it is possible that there are references made that would fall within the search parameter within manual notes relating to safeguarding, counselling, learning needs, or health declarations. As this information is sensitive it is not held centrally but is held securely. In order to review this paper-based information, a manual search would have to be undertaken by a member of the team with the appropriate access rights and it provided the example of the college counsellor needing to review counselling records and the college safeguarding officer reviewing safeguarding records. This would be a manual task and involve reading through records to a minimum of five academic years.

The Commissioner's view

35. The Commissioner accepts that the requested information in the first part of the request exceeds the fees limit of 18 hours, even if the time taken to carry out some of the permitted tasks could be reduced. The reason for this is that the request is broad and without parameters which necessitates searching across college records over an indefinite timespan.

Section 16 – duty to provide advice and assistance

36. Section 16 of the FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

37. The college did not provide any advice and assistance in its response to the complainant on 23 July 2019. Some advice and assistance was provided in the internal review response on 6 December 2019, five months after it had responded to the complainant when that response was already beyond the compliance timeframe.

38. As the college failed to provide advice and assistance in its original response to the complainant, it breached section 16 of the FOIA.

Section 10 – time for compliance

39. Section 10(1) of the FOIA states that:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

40. The college breached section 10(1) of the FOIA by responding four months late to the complainant, after intervention from the Commissioner.

Other matters

41. In order to conform with the section 45 Code of Practice², an internal review should take no more than twenty working days to complete and up to a maximum of 40 working days, only in exceptional circumstances. The college took over four months to provide an internal review which is not acceptable.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

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: 0300 1234504

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

Pamela Clements
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