

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2021

Public Authority: The Governing Body of Writtle University College

Address: Lordship Road
Chelmsford
Essex
CM1 3RR

Decision (including any steps ordered)

1. The complainant has requested the application for University status submitted by Writtle University College ("the College"). The College initially refused the request on the basis of section 43(2) of the FOIA before later amending its position to refuse the request under section 14(1).
2. The Commissioner's decision is that the College has demonstrated there would be a considerable burden on it in responding to the request and the Commissioner accepts the request has been correctly refused under section 14(1) of the FOIA.

Request and response

3. On 14 July 2020 the complainant made a request to the College for information in the following terms:
*"Please provide a copy of the entire application used to be granted degree awarding powers in March 2015 and the application for University status in electronic format.
This information should already be collated and easily accessible in electronic format."*
4. The College responded on 16 July 2020. For the application to be granted awarding powers the College stated the information was exempt

under section 43(2) of the FOIA. For the application for University College status the College provided a letter about the name change.

5. On 16 July 2020 the complainant requested an internal review of this decision and on 17 July 2020 the College responded reconfirming that the information was commercially sensitive and therefore exempt from disclosure.

Scope of the case

6. The complainant contacted the Commissioner on 17 July 2020 to complain about the way their request for information had been handled.
7. During the course of the Commissioner's investigation the College determined that not all of the information would be commercially sensitive. It advised the Commissioner that in an attempt to identify what information might be commercially sensitive or covered by another exemption such as section 40(2) or section 36, it concluded it would take an excessive amount of time for the College to complete the exercise.
8. The College therefore sought to rely on section 14(1) on the basis that the request was vexatious due to the burdensome nature of responding to the request.
9. The Commissioner asked the College to communicate this to the complainant and after doing so, she contacted the complainant who confirmed he was still dissatisfied with this response from the College.
10. The Commissioner therefore considers the scope of her investigation to be to determine if the College has correctly refused to comply with the request on the basis of section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious requests

11. Section 12 of the FOIA provides an exemption from the duty to comply with a request where doing so would exceed the appropriate limit.¹ This
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¹ [costs of compliance exceeds appropriate limit.pdf \(ico.org.uk\)](#)

is £450 for a public authority such as the College. This equates to 18 hours of work at approximately £25 per hour. This limit is laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.²

12. The following activities may be taken into account to determine whether compliance with a request would exceed the appropriate limit:
 - 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.
13. The Commissioner's guidance '*Cost of compliance exceeds appropriate limit*' states³, '*An authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.*'
14. For such circumstances a public authority may apply section 14(1) of the FOIA which provides an exemption from the duty to comply with a request if the request is vexatious.
15. The Commissioner's guidance '*Dealing with vexatious requests*'⁴ states that a public authority '*may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.*'
16. The Commissioner considers the threshold for such a refusal to be high and she considers it appropriate where:
 - The requester has asked for a substantial volume of information *and*
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner *and*

² [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2004/1000/contents/part-1/section-12)

³ [costs_of_compliance_exceeds_appropriate_limit.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-the-law/foia/foia-exemptions/costs-of-compliance-exceeds-appropriate-limit.pdf)

⁴ [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-the-law/foia/foia-exemptions/dealing-with-vexatious-requests.pdf)

- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
17. The College has explained the application in question constitutes the application itself and 281 attachments in support of the application. The College has identified all the supporting documents to the application and states that they contain a wide range of material some of which is commercially sensitive, some of which contains personal data and some of which is publicly available. The College has listed the publicly available information and set this out for the complainant.
 18. The College stated that it had spent approximately 16 hours reviewing the documents to date and had already identified information that was publicly available, personal data and information likely to be commercially sensitive. As well as this the College considered there was other information that would need further consideration as it might otherwise be exempt.
 19. As an example of this, the College has identified internal meeting minutes in one document where, although some material may be disclosable, there may be other information that is commercially sensitive or covered by section 36(2)(b) of the FOIA.
 20. The College argues there are a significant number of documents that would require further review to establish what material within them could be released and each document would then have to be prepared individually for disclosure.
 21. The Commissioner has reviewed the list of documents that are attached to the application and notes that there are a wide range of types of documents, some of which are policies and procedures and unlikely to contain exempt information so not requiring substantial time to review. However, the documents also include (but are not limited to) budget and resource allocation documents, structure diagrams, strategy documents, partnership agreements, financial forecasting documents, minutes of Governing Body, Research Committee and Senior Management meetings, and risk registers.
 22. The Commissioner considers, conservatively, at least half of the 281 attachments can be categorised as documents that could contain exempt information and would require further reviewing to establish if this is the case. It seems that documents relating to financial reviews and budgets may contain commercially sensitive information, any documents on structure will likely contain some personal data and minutes can contain exempt information falling under several exemptions depending on the nature of discussions.

23. The Commissioner notes that this is not a small number of documents; there is a substantial amount of information that would need to be reviewed by the College, some of which will be detailed in nature. It is not unreasonable to accept that the process of reviewing all of the attachments to the application will take considerable time. The College states it has spent 16 hours to date on the task and the majority of the documents are still to be considered. As such the Commissioner accepts that it is likely this will take a considerable amount of time, well in excess of 18 hours.
24. Whilst section 14 is separate to section 12, the Commissioner must be guided by the parameters outlined in the Appropriate Limits and Fees Regulations and notes that the time for compliance with this request will exceed these standards.
25. In circumstances where a public authority wishes to apply section 14(1) based on the grossly oppressive burden that compliance with a request would cause, it must balance the impact of the request against its purpose and value to determine whether the effect on the authority would be disproportionate.
26. When considering the purpose and value of the request in question, the College recognises there is a public interest in public authorities being transparent and open in their dealings and in the public being able to scrutinise important decisions in relation to the awarding of University status and degree awarding powers.
27. However, the College explained that the awarding of University status and degree awarding powers is carried out by an independent body that is subject to its own regulations and procedures in order to ensure that the process is appropriate and managed properly. As such the College considers that revealing information in support of an application does not give an insight into the decision making process, only into the information that is available for consideration. The College argues there is limited information that the public can obtain from documents in support of the application.
28. Further to this, the College points to the fact the application supporting documents provided information that was relevant up to the date of the application in 2015. Some of these documents and information have been superseded and are therefore obsolete now, diminishing their value to the general public. Whilst the College accepts historic information can be in the public interest to release, it does not accept there is any specific value in the obsolete documentation that would be released specifically in relation to this request.

29. The Commissioner is satisfied that the College would need to consider a number of exemptions, particularly section 43, 40 and 36 in the event that it complied with the request.
30. The Commissioner is further satisfied that the potentially exempt information will not be easily isolated; it will require reviewing a significant proportion of the supporting documents to identify. Whilst it might be the case that some documents could be withheld in their entirety, such as minutes if they discuss a particularly sensitive issue, the College will still need to review these documents as the Commissioner does not advocate for exemptions being applied in a blanket manner if there is potentially disclosable information contained within the document.
31. The Commissioner recognises there is a need for transparency within public authorities, particularly where decisions are made. Disclosing the full application and all of the supporting information would allow for better public understanding of the evidence that was supplied by the College.
32. That being said, as the College points out, disclosing this information will not necessarily demonstrate the evidence needed for decisions to be made or show what information was particularly helpful or insightful. It will simply show what was provided to the body making the decision but will not give any insight into how decisions are made. No other arguments for disclosure have been provided and the Commissioner therefore must conclude that the burden that preparation of the withheld information would place is not outweighed by any public interest in the disclosure of the information.
33. Having considered the above factors, the Commissioner is satisfied that the College is entitled to refuse the request on the basis of section 14(1).

Other matters

34. The Commissioner's guidance states *'Where an authority believes that complying with the request will impose a grossly oppressive burden, it is good practice to talk to the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request.'*
35. The Commissioner is not satisfied that the College has offered the requester an alternative disclosure which would not impose such a burden to produce and she stresses that the College should be mindful of this in the future and she would expect the College to consider if there is any advice it can offer the requester in this case.

Right of appeal

36. 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

37. 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.
38. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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