

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2022

Public Authority: **Aylsham Learning Federation**
Sir Williams Lane
Aylsyham
Norfolk
NR11 6AN

Decision

1. The complainant has requested information relating to Aylsham Learning Federation's (the Federation) governors' meetings. The Commissioner's decision is that the Federation was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the Federation complied with its obligations under section 16 to offer advice and assistance.

Request and response

2. The complainant made the following information request to the Federation on 2 February 2022:

"Please could you send the minutes for the last 3 years of all governors meetings and committees.

Please could you also send any reports/papers considered or presented at the meetings."
3. The final position of the Federation is refusing to comply with the request under section 12 of FOIA on the basis that the cost of complying with the request would exceed the cost threshold of £450 for local authorities et al.

Reasons for decision

4. This reasoning covers whether the Federation has correctly cited section 12(1) of FOIA in response to this request.

Section 12 – cost of compliance

5. Section 12(1) of 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”).
6. Section 12(2) of 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. The Federation relied on section 12(1) in this case.
7. 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 Federation is £450.
8. 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 Federation.
9. 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.
10. 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.

11. 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.
12. 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.

Would the cost of compliance exceed the appropriate limit?

13. Based on the detailed estimates provided in the internal review, the Commissioner was satisfied that a decision could be reached without seeking further submissions from the Federation.
14. The Federation explained in its internal review decision that, as requested by the complainant, it undertook a sampling exercise, whereby 4 meetings were selected at random, including both full governor and committee meetings. The Federation stated that the average time taken to extract and provide this information, along with relevant documents amounted to an average of 20 minutes and 32 seconds per meeting. Based on the number of meetings requested this would amount to a total time of 20 hours and 52 minutes. The Federation also advised that the minimum number of documents that was noted per meeting was 18 and the maximum 35, therefore even at a more conservative estimate, the number of relevant documents would exceed 1,000.
15. The Commissioner considers that the Federation estimated reasonably that it would take more than the 18 hours / £450 limit to respond to the request. The Federation was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

16. Section 16(1) of 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).

17. The Commissioner notes that the Federation provided the following advice in its initial response to the request and in its internal review decision:

“We would advise that should you wish to submit a revised request that streamlines the information requested to a specific committee or year or minutes without supporting and presented documents, as suggestions this may help to bring this within the “appropriate limit”.

To help with this with have the following committees;

- Full governing board
- Business management and finance
- Human resources and personal development
- Curriculum and assessment

A committee report is presented for each committee at each full governing board meeting.”

18. The Commissioner is therefore satisfied that the Federation met its obligations under section 16 of FOIA.

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

Right of appeal

19. 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

20. 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.
21. 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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