

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2022

Public Authority: The Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant made six related requests for information in connection to the Department for Education's ('DfE') procurement of services from Havas Media Limited ('Havas'). The DfE refused the requests as it considered that compliance with them would exceed the cost limit under section 12 FOIA.
2. The Commissioner's decision is that the DfE has correctly cited section 12(1) FOIA, in response to the requests. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 FOIA. However, he finds that the DfE breached section 10(1) FOIA by failing to respond to the requests within the statutory time for compliance.
3. The Commissioner does not require the DfE to take any steps.

Request and response

4. In April 2021, the complainant submitted six separate but related requests for information to the DfE. These are set out in Annex A to this Notice. The requests were aggregated by the DfE and the complainant raised no issue with this.
5. On 11 June 2021, the DfE responded to the aggregated requests. Whilst it held the information, it refused to provide it, citing the cost limit exemption under section 12 FOIA. Under section 16 FOIA (advice and assistance) it suggested the complainant narrow his request by

removing the request for copies of invoices rendered by Havas and settled by DfE.

6. On 11 June 2021, the complainant narrowed and submitted a new request to DfE and removed the invoice elements. This narrowed request (ref: 2021-0025037) is being dealt with separately by the DfE.
7. On 15 June 2021, the complainant requested an internal review of the DfE's response to his original aggregated requests. The DfE responded on 19 July 2021 upholding its original position.

Scope of the case

8. The complainant contacted the Commissioner on 22 June 2021 to complain about the way his request for information had been handled.
9. The complainant disagrees with the DfE's application of section 12 FOIA to his original aggregated requests. In his internal review request on 15 June 2021 he said:

"With contemporary electronic accounting systems, it is difficult to see how the retrieval of the electronic copies of invoices received pursuant to one contract with a counterparty would be the matter of more than a few minutes' work, rather than 4 hours' work or more, as you are in effect stating. We cannot therefore see how this estimate could be reasonable unless you have failed to consider an absolutely obvious and quick means of locating, retrieving or extracting the information."
10. The Commissioner considers the scope of this case to be to determine if the public authority has correctly cited section 12(1) FOIA in response to the aggregated requests. He has also considered whether the DfE complied with its duty to provide advice and assistance under section 16 FOIA.
11. The Commissioner did not consider the scope of his investigation to be to determine if the Council has correctly aggregated the requests under section 12(4) FOIA, as the complainant did not dispute this. In any event, the Commissioner considers the DfE was entitled to aggregate the requests under section 12(4) FOIA. He is satisfied that all of the requests were made by the same person, within 60 working days of each other and these requests relate to the same or similar information.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

12. Section 12(1) 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 cost limit.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for public authorities such as the DfE.
14. 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 24 hours for the DfE to deal with this request.
15. 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.
16. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*, 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.
17. Section 12 is an absolute exemption and 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.

Would the cost of compliance exceed the appropriate limit?

18. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
19. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 24 hours.
20. The main focus of the DfE's costs estimates in this case have been the number of invoices from Havas held by DfE which need to be located and then extracted.
21. As is the practice in a case where the public authority has cited the cost limit under section 12, the Commissioner asked the DfE to provide a more detailed explanation of its cost calculation.
22. To be able to fulfil this request, the DfE explained in its response to the Commissioner that it would need to search the financial years of 2018-19; 2019-20; and 2020-21.
23. The DfE further explained, by way of background, that all invoices for services from Havas are sent directly by Havas to the DfE finance department. The invoices are recorded against a purchase order ('PO') for the specific piece of work done by Havas. Each PO can have several Havas invoices assigned to it.
24. Over the time period in question, the DfE transitioned from the 'RM SOP' finance system to the 'MS Dynamics (Business Central)' finance system. To gain access to the closed 'RM SOP' system would require the DfE to obtain assistance from IT colleagues.
25. The DfE have explained that to locate the requested invoice information, it first needs to recover each PO individually from the two finance systems over the time period in scope of the request, and then individually review all of the invoices assigned to each PO to determine what falls within the scope of the request.
26. To complicate matters further, there are also 'live' POs for work currently being delivered by Havas (on the MS Dynamics (Business Central) finance system) and 'closed' POs (on the RM SOP system). To retrieve closed POs, the finance system support team need to commission the reopening of the closed Havas POs on the RM SOP finance system.

Determining whether the information is held

27. In its response to the Commissioner the DfE stated that it would first need to conduct an electronic system search for all POs related to Havas and the contract. Secondly it would need to identify any gaps where POs have been closed and are no longer available on the current finance system.

Locating the information, or a document which may contain the information

28. The DfE provided an estimate for the time taken to locate the invoices related to each PO in scope.
29. To search for all POs and their attached invoices, the DfE estimate it would take 2 minutes per PO. Each finance system contains the following POs:
- RM SOP = 80 closed POs
 - MS Dynamics = 57 current POs

Therefore, the total number of POs in scope is 137 POs.

30. In addition, for POs on the closed RM SOP finance system, they require an additional 3 minutes per closed PO, due to the IT assistance required to open these POs.
31. For the RM SOP system, this equates to: 80 POs x 5 minutes per PO = 400 minutes.
32. For the MS Dynamics system, this equates to: 57 POs x 2 minutes per PO = 114 minutes.
33. DfE therefore estimate the time involved in finding all POs and invoices that may be in scope taking a total of 514 mins or nine hours.

Retrieving the information, or a document which may contain the information

34. The DfE estimate that Havas have issued the DfE with 438 invoices (covering the period of the request) which would need to be pulled from the 137 individual POs, held on the two separate finance systems.

Extracting the information from a document containing it

35. The DfE confirmed it carried out a sampling exercise of 10 POs which contained a total of 49 invoices. DfE found that a single 'read through' of each invoice would take an estimated 14 minutes per invoice. Included in the estimated timing for each invoice 'read through' is:
- Pulling the invoices from the two finance systems (by individual PO) into Excel sheets and then combining these into a 'longlist'

covering all invoices in scope, including the specific detail from the invoices that fall within scope of the request;

- Checking individual invoice totals against internal budget systems, such as internal budget spreadsheets and finance trackers, to ensure accuracy of the information pulled from the finance POs. This is also to ensure any duplicate invoices sent by Havas are removed;
 - Accessing a separate electronic finance system, the 'Adaptive Insights' system, and pulling down four financial years' worth of transaction reports, filtering them down to Havas as the supplier and then collating them; and
 - Matching each individual invoice and its 'Business Central Code' to its original invoice ID issued by Havas. This is to ensure accuracy and to ensure that the figures/totals match what has actually been paid and accounted for.
36. The DfE estimate that extracting the requested information from 438 invoices, at 14 minutes per invoice, would take an estimated 102 hours.
37. Regardless of whether a final verification of the accuracy of the data is required or not, the cost limit will be exceeded before this stage.
38. The DfE have confirmed that the estimate is based on the quickest method of gathering the requested information. In its response to the Commissioner, the DfE said that this was because a request of this nature, (i.e. to pull every individual invoice for each piece of work invoiced for, relating to a specific contractor and contracts), is not something that the DfE's finance systems had been designed to accommodate. It is further complicated by the migration of invoices and other relevant finance/contract data to a new finance system part-way through the work undertaken by Havas, as well as the volume of invoices concerned. This is why it would require the DfE to undertake their searches and analysis of returned information manually rather than automatically.
39. The DfE's total costs estimate for responding to the request for invoices alone is 111 hours or £2,769.
40. Having considered the cost estimate provided, the Commissioner's overall conclusion is that the DfE has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 24 hours. Even if the cost estimate was reduced by half it would still far exceed the cost limit. Therefore, the DfE was entitled to apply section 12(1) of the FOIA to the complainant's request.

Section 16 – advice and assistance

41. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. 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).
42. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester how their request could be refined or reduced to potentially bring it within the cost limit.
43. The Commissioner notes that the DfE suggested a way the complainant may wish to narrow the scope of the requests, namely by removing the request for the invoices. On 11 June 2021, the Commissioner notes that the complainant submitted a new request to DfE and removed the request for the invoices. This narrowed request (ref: 2021-0025037) is being dealt with separately by the DfE.
44. The Commissioner considers this was an appropriate response in the circumstances given the request to pull every individual invoice for each piece of work invoiced by Havas was something that the DfE's finance systems had not been designed to accommodate.
45. He is therefore satisfied that the DfE met its obligation under section 16 of the FOIA and does not require it to take any steps.

Timeliness

46. Section 10(1) FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
47. The first request for information was made on 19 April 2021. The DfE responded on 11 June 2021 (taking 39 working days). As this was more than 20 working days after the request was made, the Commissioner therefore finds that the DfE breached section 10(1) FOIA. However, as a response was issued to the complainant and the Commissioner notes that the DfE apologised in its internal review response for the delay, no further steps are required by the DfE.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Other Matters

48. As regards the internal review response, the complainant also complains that the DfE was late in responding. The complainant requested a review on 15 June 2021 and the DfE replied, 24 working days later, on 19 July 2021. There is no statutory time set out in the FOIA within which public authorities must complete a review. The Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. However, in his guidance, the Commissioner has said that the maximum amount of time taken should not be more than 40 working days. In this case, as the DfE completed its review well within 40 working days.

Right of appeal

49. 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

50. 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.
51. 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

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

Annex A

1. 19 April 2021

The "Call Off Contract" dated 30th May 2018 between Department for Education and Havas Media Limited, with "Procurement reference" RD1001440, <https://www.contractsfinder.service.gov.uk/notice/6fc75784-1b4c-4bec-a883-86dc38bfaf30?origin=> and linked to from the Department for Education web page, makes reference to a "Letter of Appointment" (defined on page 34 of the Call Off Contract), an "Agency Proposal" (defined page 29 of the Call Off Contract), and a "Framework Agreement" (defined page 32 of the Call Off Contract). Under freedom of information provisions, please provide copies of the executed/final versions of the aforementioned Letter of Appointment, Agency Proposal and Framework Agreement.

2. 19 April 2021

The "Call Off Contract" dated 30th May 2018 between Department for Education and Havas Media Limited, with "Procurement reference" RD1001440, and linked to from the Department for Education web page <https://www.contractsfinder.service.gov.uk/notice/6fc75784-1b4c-4bec-a883-86dc38bfaf30?origin=SearchResults&p=1>, makes reference to "Statements of Work" (defined page 37 of the Call Off Contract). Under freedom of information provisions, please provide copies of all aforementioned Statements of Work agreed and signed between the aforementioned parties under the aforementioned Call Off Contract.

3. 20 April 2021

The "Call Off Contract" dated 30th May 2018 between Department for Education ("DfE") and Havas Media Limited ("Havas"), with "Procurement reference" RD1001440, and linked to from the Department for Education web page <https://www.contractsfinder.service.gov.uk/notice/6fc75784-1b4c-4bec-a883-86dc38bfaf30?origin=SearchResults&p=1>, is entitled "DEPARTMENT FOR EDUCATION TEACHER RECRUITMENT 'GET INTO TEACHING' CAMPAIGN", and, in Schedule 2 under 'Overarching Brand/Campaign', reads "This statement of work is for delivery of services and deliverables for the government's teacher recruitment campaign, currently known as 'Get Into Teaching'" (our emphasis). Under freedom of information provisions, please provide: 1. An explanation as to whether the aforementioned 'Get Into Teaching' Campaign is now, whether in whole or in part, known by any other

name, and if so the date(s) from which it, or the applicable part of it, came to be known by such other name; and 2. A list of any and all other parties directly engaged by DfE to work, in whole or in part, on the aforementioned 'Get Into Teaching' Campaign (and any successor/part successor thereto), for any part of the period August 2017 to December 2020, together with the applicable contracts under which they were engaged (or links thereto); and 3. A statement of whether Blackberry Productions Limited has worked as a contractor or sub-contractor in relation to the 'Get Into Teaching' Campaign; and, if a contractor, a copy or link to the contract by which they were contracted by DfE therefor, or, if a sub-contractor, a copy or link to the contract by which the party contracting them was contracted by the DfE therefor.

4. 21 April 2021

We refer to the "Call Off Contract" dated 30th May 2018 between Department for Education ("DfE") and Havas Media Limited ("Havas"), with "Procurement reference" RD1001440, and linked to from the Department for Education web page <https://www.contractsfinder.service.gov.uk/notice/6fc75784-1b4c-4bec-a883-86dc38bfaf30?origin=SearchResults&p=1>. Under freedom of information provisions, please provide copies of all invoices rendered by Havas and settled by DfE under the aforementioned Call Off Contract. (Please note that we are already aware, thanks to the response to a previous request, of the detailed analysis of DfE spend which is published every month at links such as <https://www.gov.uk/government/publications/dfe-and-executive-agency-spend-over-25000-2020-to-2021>, however upon inspection we have found that (a) this analysis does not include expenditures under £25,000, and (b) it is not impossible to discern, from this data, whether or not a payment is pursuant to the aforementioned Call Off Contract, and (c) it is not possible to discern from this data what, in any detail, goods/services any payment is in respect of – hence the present request)

5. 26 April 2021

We refer to our freedom of information request, the submission of which was automatically acknowledged by you on 21 April 2021 at 12:00, a copy of which acknowledgement is attached to assist you with tracing it correctly. We are referring to it by this means because we have not yet been notified of any reference number. In that request, we referred to a Call Off Contract between Department for Education ('DfE') and Havas Media Limited (defined in the request as 'Havas') and asked for copies of all settled invoices from the latter party. Since making that request, it has come to our attention that (a) while the

counterparty to DfE in the contract is named as 'Havas Media Limited', 'Havas UK Limited' is the entity named as the supplier at <https://www.contractsfinder.service.gov.uk/notice/6fc75784-1b4c4bec-a883-86dc38bfaf30?origin=SearchResults&p=1>, and (b) neither of these two entities is specified as a recipient of payments over £25k in the monthly DfE spend spreadsheets between April 2018 and May 2020, as might have been expected, but payments to an affiliate entity, 'Havas Worldwide London Limited', do appear in those spreadsheets. It has occurred to us, therefore, that it may be the case that invoices to DfE under the Call Off Contract with Havas Media Limited linked to at the link in the previous paragraph may not have been rendered from the entity named in that contract, but from an affiliate entity. With that in mind, and for the avoidance of doubt, may we please amend the second paragraph of our request to take into account this possibility, i.e. from: "Under freedom of information provisions, please provide copies of all invoices rendered by Havas and settled by DfE under the aforementioned Call Off Contract." To: "Under freedom of information provisions, please provide copies of all invoices rendered to and settled by DfE under the aforementioned Call Off Contract, whether rendered by Havas or any other entity." We trust this makes sense and is sat

6. 26 April 2021

We refer to the 'Campaign Solution Services' contract 'for the Government's Teacher Recruitment Marketing Campaign' awarded as set out at link <https://www.contractsfinder.service.gov.uk/notice/6fc75784-1b4c4bec-a883-86dc38bfaf30?origin=SearchResults&p=1> to Havas UK Limited (as stated at such link) ("Havas") from the Department for Education ("DfE") and commencing 30th May 2018, and described at such link (under 'Description') as "...for the delivery of services and deliverables for the government's teacher recruitment campaign, currently known as 'Get Into Teaching'", and ask you please, under freedom of information provisions, to answer the following questions: 1. Is it the case that, prior in time to the incumbency of Havas as providers of the services specified in the aforementioned contract to DfE, another company (or companies) provided the same or broadly the same services to DfE, and in that sense were predecessors to Havas (the "Predecessors") as providers of the applicable campaign solution services for the Government's aforementioned Teacher Recruitment Marketing Campaign. 2. When were the Predecessors appointed, and under what contract, and for what term? 3. In the tender or other selection process out of which the Predecessors were appointed, what other companies either tendered or were considered for the work?