

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2024

Public Authority: British Film Institute
Address: 21 Stephen Street
London
W1T 1LN

Decision (including any steps ordered)

1. The complainant has requested information about the diversity data for all applicants to three funding programmes run by the British Film Institute. The British Film Institute ('BFI') provided some information but advised that it was not able to break the information down by year and specific fund, as requested, within the cost limit.
2. The Commissioner's decision is that BFI was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner finds that BFI complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps.

Request and response

4. On 19 January 2024, the complainant wrote to BFI and requested information in the following terms:

"Please send to me the diversity data for all the applicants, for all that which is listed on the below webpage. Please use the same headings and categories the webpage uses. Please list by year and use numerical percentages, but input into an excel or .csv spreadsheet."
5. BFI responded on 16 February 2024. It provided information from equality monitoring forms submitted for production, development or Network funding applications for the requested time period. BFI advised

that it was not able to provide the information broken down by year or by specific fund within the cost limit.

6. Following an internal review, BFI wrote to the complainant on 15 March 2024. It explained about why it couldn't provide the requested breakdown of information within the cost limit and maintained its reliance on section 12 of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 16 March 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether BFI was correct to rely on section 12(1) to refuse the request. The Commissioner will also consider whether BFI met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. 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").
10. 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 BFI relied on section 12(1) in this case.
11. 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 BFI is £450.
12. 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 BFI.

13. 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.
14. 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.
15. 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.
16. 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?

17. In its internal review response, BFI explained that its current grants database system does not have the functionality to hide confidential diversity monitoring data from assessors. BFI therefore has two separate forms for each applicant that are entered on two separate systems in order to maintain confidentiality. One is the main funding application form which is given an internal BFI reference number when the application is acknowledged by its teams and passed to assessors. This form contains the information pertinent to the project or activity for which they are applying for funding. A separate form, containing diversity monitoring data relevant to the applicant rather than the project, is submitted and maintained on an entirely separate database and only one member of staff has access to this data.

18. BFI has explained that it does this is to ensure that its assessors evaluate funding applications without knowledge of any of the applicant's diversity monitoring data. It explained that the diversity monitoring data is only matched with applications after a successful application has been made. BFI added that this is a manual process which can only be carried out by one member of staff to ensure it maintains confidentiality.
19. In its internal review response, BFI provided a table of the applications received per project per year:

	Development (inc. additional funding)		Production (inc. additional funding)		NETWORK (all strands and inc. additional funding)	
	Applications	Awards	Applications	Awards	Applications	Awards
2018	247	116	166	29	491	72
2019	252	83	143	21	823	98
2020	319	112	181	32	1,329	119
2021	210	81	144	23	1,277	110
2022	283	74	168	22	1,228	98
2023	178	54	174	14	2,214	24

20. BFI carried out a sampling exercise on applications to the Development fund for the year 2021 where 210 applications were received. It explained that the first step would be to match up the 210 development applications from 2021 against their respective diversity monitoring forms and it advised this takes at least four hours. The second step would be to verify and standardise the information so that the diversity monitoring forms use the same terminology and meet the latest BFI Equality Monitoring guidance. BFI estimates that this step would take approximately one to two hours for the example given. For the final step BFI explained that each column of data it reports against must be tallied and manually verified within an excel spreadsheet. A table is created from this tallied data which also must be verified. BFI estimates that this process would take at least two hours to complete for the example of 210 development applications from 2021. Therefore, BFI estimates that to provide the requested information for one fund for just 2021, would take around seven to eight hours.
21. To provide the requested information for the three funds for all the years specified, BFI would need to repeat this process a further 17 times with application numbers of over 1000 for some of the funding rounds.

22. The complainant has argued that even if BFI use a separate form for diversity monitoring, this form should contain reference to the fund application otherwise it would not be possible to match them. The Commissioner agrees that this would make sense and he asked BFI to confirm the information that is used to match the two forms. BFI has confirmed that the forms are matched using the name of the fund but also the name of the proposed project, the name of the applicant or organisation and the date of submission. BFI explained that it needs to carry out a manual check as applicants can submit a funding application for a project on multiple occasions because their team may change (between declined and successful applications), or they apply for multiple funds where the diversity monitoring forms can differ slightly over the years. BFI explained, for example, development through to production awards can take more than five years.
23. The Commissioner notes that BFI already publishes equality and diversity information for the projects that have successfully secured funding through the three funds. He considered whether BFI would be able to provide the requested information if it could just collate the information for the unsuccessful projects. However, manual checks would still need to be carried out due applicants being able to submit multiple applications for one than one fund and the number of applications received often far exceeds the number of successful projects. The Commissioner therefore finds that this would likely still not be feasible within the cost limit.
24. In its internal review response, BFI acknowledged that it is exploring other systems that would enable it to provide applicant diversity monitoring data in a less manual way, whilst maintaining the confidentiality.
25. The equality monitoring information is stored separately to the application information. There are also a large number of applications that BFI would need to manually cross-reference and check across the three projects and six years. As such, the Commissioner considers that BFI estimated reasonably that it would take more than the 18 hour limit to comply with the request. BFI was therefore correct to apply section 12(1) of FOIA to the request.

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

26. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request so far as it would be reasonable to expect the authority 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).

27. The Commissioner notes that, in its initial response BFI did not offer the complainant advice and assistance. However, after being prompted by the complainant, BFI did attempt this at internal review stage and suggested that the request could be refined to only include smaller funds or one year at a time. BFI stated however that due to the volumes of applications it would still be difficult to provide the information in the requested format within the cost limit.
28. The Commissioner is therefore satisfied that BFI complied with section 16 of FOIA when dealing with this request. He does however note that it would have been more useful for the complainant to receive advice and assistance in the initial response.

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

Right of appeal

29. 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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
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Wycliffe House
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