

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2021

Public Authority: Oxford, Cambridge and RSA Examinations Ltd
Address: The Triangle Building
Shaftesbury Road
Cambridge
CB2 8EA

Decision (including any steps ordered)

1. The complainant has requested details of certain types of complaints. Oxford, Cambridge and RSA Examinations Ltd ("OCR") relied on section 12(1) of the FOIA (cost exceeds appropriate limit) to refuse the request.
2. The Commissioner's decision is that OCR has reasonably estimated that the cost of complying with the request would exceed the appropriate limit. It was therefore entitled to rely on section 12 of the FOIA to refuse the request. However, the Commissioner does not consider that OCR complied with its section 16 duty to provide advice and assistance.
3. The Commissioner does not require further steps to be taken.

Background

4. OCR is an awarding body of GCSE, A Level and vocational qualifications. The company is a separate legal entity from Cambridge University Press and Assessment (which is part of the University of Cambridge), but is wholly owned by that organisation. OCR is therefore a publicly-owned company within the scope of section 6 of the FOIA and thus obliged to respond to requests made under that Act.

Request and response

5. On 23 March 2021, the complainant requested information of the following description:
 - "[1] *The number of malpractice/maladministration/bias/discrimination complaints that have been made to OCR relating to the Summer 2020 exams.*
 - "[2] *The number of malpractice/maladministration/bias/discrimination complaints that have formally been investigated by OCR relating to the Summer 2020 exams.*
 - "[3] *The outcome of the formal investigations (i.e. how many successful/rejected).*
 - "[4] *The criteria/guidance that OCR used to determine whether a complaint would be formally investigated.*
 - "[5] *The date when the figures in 1 and 2 were last reported Ofqual.*
6. On 19 April 2021, OCR responded. It provided the information within the scope of elements [4] and [5], but refused to respond to the remaining elements as it considered that to do so would exceed the cost limit and therefore section 12 of the FOIA was engaged.
7. The complainant requested an internal review on the same day. OCR sent the outcome of its internal review on 10 May 2021. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 14 May 2021 to complain about the way his request for information had been handled. He considered that OCR had not interpreted his request correctly and hence a large proportion of the work it was claiming it would need to carry out would not be necessary.
9. The Commissioner considers that the scope of her investigation is to determine whether OCR has reasonably estimated that the cost of complying with the request would exceed the appropriate limit.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

10. 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.*

11. Section 12 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.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

12. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as OCR. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

13. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) 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".¹ 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.

The complainant's position

15. The complainant argued that OCR had misunderstood his request. In particular, he pointed to OCR's refusal notice in which it stated that:

"Like any exam board or similar public body, and not least because of the high stakes nature of results last year, we received a large number of complaints, suspected malpractice cases and allegations of bias/discrimination. Each of these cases is unique, and often do not sit in just one area of complaint i.e. malpractice allegations may also include allegations of bias or discrimination as a small part to the overall case, or a case headed bias or discrimination may in fact contain a complaint but include no evidence of the bias or discrimination."

16. When seeking an internal review, the complainant pointed out that he had not asked OCR for separate totals relating to malpractice, to maladministration, to bias and to discrimination – he simply wanted one total covering all such complaints. Therefore, he argued, any time spent on a task such as separating malpractice allegations from bias allegations was impermissible because it was not necessary to do so in order to comply with his request.

OCR's position

17. OCR explained to the Commissioner that its response had been mischaracterised and that it had interpreted the request correctly. However, even using the correct interpretation, the work required of OCR would put the request over the cost limit.
18. OCR explained that the exceptional circumstances of the 2020 GCSE and A Level awards had led to a record number of complaints being submitted. It did not categorise complaints in the way that had been described and would therefore need to review each complaint manually

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

to determine which complaints fell within the scope of the request and which did not.

19. A total of 594 complaints were received by OCR during 2020. A number of these complaints did relate to one or more of the categories set out in the request. However, OCR pointed out that it also received complaints which related to a number of other matters too. OCR noted that complaints might relate to:

- Appeals
- Timetabling concerns
- Assessors complaints (payments and support)
- Examination entries
- Certificates
- Customer service (communications)
- Despatch of certificates or examination papers
- IT systems
- Coursework or Examination moderation
- Fees and payments
- Our qualifications (specification content, resources, support)
- Question papers
- Special considerations and access arrangements
- Complaints about schools and colleges, and their delivery of our examinations
- Training courses
- Information and resources provided to support examinations and qualifications

20. Furthermore, OCR explained that:

"The complaint process within OCR is not as simple as a single complaint type – a complaint may be made about a timetabling issue or access arrangement which contains within it details about bias and/or discrimination, which adds to the complexity of the complaint. In addition, the nature of the complaint may change as the investigation proceeds and may become an allegation of bias etc. once the facts are known. Some aspects of complaints may be investigated by different teams and will be duplicated across the systems. As outlined above, OCR would be unable to accurately count the number of complaints without reviewing the content of each one and we would not wish to publish inaccurate data in response to a request under the Act."

21. OCR noted that its regulator Ofqual did not require it to maintain its records in such a way as to ensure that complaints were categorised in the manner specified in the request and that it did not do so. It noted that in previous years it had received relatively few such complaints with

the overall number of complaints also being much lower and the information less complex to sift through.

22. Because of the way that different aspects of a complaint might be dealt with by different teams, OCR noted that the information was:

"spread across multiple systems and some complaints will appear in more than one system so we cannot guarantee that the information will be accurate by simply extracting the data from each system. We would not only need to remove duplicated cases, but would also need to analyse the substance and correspondence of the complaint in order to comply with this request."

23. When pressed, OCR noted that it did keep a separate total of complaints relating to malpractice only, but noted that a malpractice element may only emerge whilst a complaint, ostensibly relating to a different matter, was under investigation.
24. Not only would it be necessary to sort through each complaint to determine which fell within the scope of the request and which would not, but OCR noted that it would need to carry out additional work in order to respond to elements [2] and [3] of the request.
25. OCR had interpreted the phrase "formally investigated" to refer to complaints where it had written to the school or college involved to seek further information. However, it pointed out that this information could only be gathered by going into each individual complaint file to determine whether further information had been sought and, if it had, what the outcome of the complaint had been.
26. Although some complaint files contained only a few pages, OCR noted that others might run to dozens of pages. It therefore considered that a central estimate of five to ten minutes per case file was reasonable, based on a small sampling exercise that it had carried out. On that basis, it noted that it would not be possible to check all the complaint folders without exceeding the appropriate limit.

The Commissioner's view

27. In the Commissioner's view the request would exceed the cost limit and therefore section 12 of the FOIA is engaged.
28. When deciding whether this exemption is engaged, the Commissioner is required to assess whether the public authority's estimate is reasonable based on the way records are actually held. She is not required to determine whether the appropriate limit might be exceeded if records were held in a more easily-searchable manner.

29. In this case, OCR has stressed the amount of cross-checking it would need to do across the various systems on which its information is stored in order to identify all relevant information. It is not clear to the Commissioner whether such duplication is usual practice or whether it has come about as a result of the pandemic. OCR has said that it holds its information in a manner suitable for its own business needs. Challenging such an assertion would take the Commissioner beyond the scope of a complaint under section 50 of the FOIA.
30. The Commissioner recognises that the only reliable way of extracting all the information within the scope of the complainant's request would be to review each complaint file manually: first to determine whether it fell within the scope of the request, second (for those files that did fall within scope) to determine whether information had been sought from the institution complained about and thirdly to establish what the outcome of that complaint was (if indeed there had been one).
31. The Commissioner accepts that complaint files can vary considerably in length and therefore OCR's estimate of five minutes per file is not wholly unreasonable. The Commissioner also notes that, in order to review all 594 complaints without exceeding the cost limit, OCR would need to be able to review each file and extract the necessary data in under two minutes – which she does not consider feasible.
32. OCR did point out, when pressed, that it kept a separate record of malpractice cases, but the Commissioner notes that the complainant's definition went wider than malpractice alone, meaning that all complaint files would need to be searched.
33. Having considered the available evidence, the Commissioner is satisfied that section 12 is engaged and therefore OCR was entitled to refuse the request.

Section 16 - Advice and Assistance

34. The Commissioner notes that, at the point it refused the request, OCR did not offer any advice and assistance. OCR accepted that it had not done so, but noted that, given the way the request had been framed and the way the information was held, it was difficult to refine the request in such a way as not to exceed the appropriate limit.
35. The Commissioner recognises that a public authority is only required to offer "reasonable" advice and assistance to those wishing to make information requests. A public authority is not required to "lavish ingenuity" on a request when there is no obvious way of refining it.
36. Given the OCR records malpractice complaints separately, the Commissioner considers that, had the complainant refined his request so

that it only related to malpractice (ie. not maladministration or bias as well) OCR should have been able to deal with element [1] of the request without exceeding the appropriate limit – and possibly elements [2] and [3] as well.

37. The Commissioner therefore takes the view that there was reasonable advice and assistance that OCR could have offered to the complainant to help him refine his request. As OCR failed to offer this advice and assistance, it breached its section 16 obligations.
38. Given the way she has set out her finding in paragraph 36, the Commissioner does not consider that it would be proportionate to order OCR to take any steps to remedy this breach.

Right of appeal

39. 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

40. 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.
41. 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

Roger Cawthorne
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