

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2021

Public Authority: The Diocese of Westminster Academy Trust

Address: Vaughan House
46 Francis Street
London
SW1P 1QN

Decision (including any steps ordered)

1. The complainant has requested information relating to the employment and career pay advancement of black staff at the Diocese of Westminster Academy Trust (the Trust). The Trust relied on section 12(1) of the FOIA to refuse the request, on the basis that the cost of providing the requested information would exceed the appropriate limit set out in the FOIA.
2. The Commissioner's decision is that the Trust is entitled to rely on section 12(1) of the FOIA to refuse the complainant's request. The Commissioner does not consider that it would be possible to refine the request meaningfully in order to bring the cost of compliance within the cost limit and is therefore satisfied that the Trust has not breached section 16(1) (duty to provide advice and assistance). However, she has recorded procedural breaches of section 1(1), section 10(1), and section 17(1) of the FOIA.
3. The Commissioner does not require the Trust to take any steps as a result of this decision notice.

Request and response

4. On 6 July 2020, the complainant wrote to the Trust to make the following request for information:

"I'm formally submitting an FOI to DOWAT regarding the employment and career pay scale advancement of black staff for the last ten years

in your schools especially secondary schools with their extended SLT promotional ladders."

5. The Trust responded on 26 October 2020, stating:

"The Trust does not collate the progression data of staff by ethnicity so the information you have requested is not held by us. Steps are being taken by the Trust to record ethnicity data centrally and for this to then help inform a review of Trust policies to ensure the Trust is fully meeting its equality duties and responding to developing good practice. A report on our progress in doing so will be shared.

The Trust does not have any fast tracking scheme for promotion."

6. The complainant requested an internal review on 9 November 2020.
7. The Trust sent the complainant the outcome of its internal review on 28 January 2021. The Commissioner understands from this response that the Trust does not hold any progression data centrally, but that some data relating to staff progression is held by individual schools. However, the Trust refused to comply with the request under the exemption provided by section 12(1) of the FOIA, on the basis that providing the requested information would exceed the appropriate cost limit set out in the FOIA.

Scope of the case

8. The complainant initially contacted the Commissioner on 14 October 2020 to complain about the way his request for information had been handled and the Trust's failure to respond to his request for information.
9. The Commissioner wrote to the complainant on 24 October 2020 to request further information to support his complaint.
10. Upon receiving the further information from the complainant on 2 November 2020, the Commissioner wrote to him again on 4 November 2020 to explain that before accepting complaints, she requires public authorities to be allowed the opportunity to respond to any concerns that the requester may have about the way in which a request has been dealt with. The Commissioner therefore advised the complainant to ask the Trust to carry out an internal review.
11. On 7 January 2021, the complainant wrote to the Commissioner to complain about the time taken for the Trust to carry out the internal review that he had requested. The Commissioner wrote to the Trust on

12 January 2021 and requested that it issue an internal review decision as soon as is practicable and within 20 working days.

12. Following receipt of the outcome of the Trust's internal review, the complainant wrote to the Commissioner on 11 February 2021 to complain about the internal review response that he had received from the Trust.
13. The Commissioner wrote to the complainant on 19 July 2021, outlining the Trust's response to her queries and providing a preliminary view that it was highly likely that the Commissioner would uphold the Trust's decision to rely on section 12 to refuse to comply with the request. The Commissioner asked the complainant whether he was prepared to accept the preliminary view and withdraw his complaint.
14. The complainant responded to the Commissioner on 15 August 2021, stating that he did not wish to withdraw his complaint.
15. The Commissioner therefore wrote to both the complainant and the Trust on 24 August 2021, advising that she was proceeding to draft a formal decision notice.
16. In view of the above, the Commissioner considers that the scope of this decision is to consider whether the Trust is entitled to rely on section 12(1) of the FOIA to refuse to provide the requested information. She has also considered the associated duty under section 16(1) of the FOIA to provide an applicant with advice and assistance if it is reasonable to do so.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

17. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the "appropriate limit", as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
18. The estimate of cost must be reasonable in the circumstances of the case. The "appropriate limit" is set in legislation at £600 for central government departments and £450 for all other public authorities. Academy Trust's are not central government departments, legislative bodies or part of the armed forces. The appropriate limit for the Trust in this case is therefore £450. In other words, the Trust does not have to respond to the request if doing so would cost more than £450.

19. When estimating how much it will cost to respond to a request, the public authority can take into account the costs it reasonably expects to incur when:
 - 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 the information.
20. This cost is likely to be largely or completely made up of the costs of staff time in carrying out the above activities. Public authorities should calculate the time spent on these activities at the flat rate of £25 per person, per hour. This means that the £450 appropriate limit will be exceeded if it would require more than 18 hours of staff time to carry out the above activities in order to respond to the request.
21. At the Commissioner's request, the Trust has revisited the request and has maintained its position that the estimated cost of responding to it would exceed the appropriate limit (which, as explained above, is £450 or 18 hours of staff time).
22. The Trust has explained that it is a multi-academy trust with 11 academies consisting of six secondary schools and five primary schools, which are spread across a wide geographical area in the South East of England.
23. As stated in its initial response to the complainant, the Trust does not collate the progression data of staff by ethnicity. Instead, any data about staff progression is held within individual personnel files.
24. The Trust stated that until September 2020, the Trust had a company secretary who undertook some central, strategic functions across the Trust, but there were no other employees who worked at the centre. It confirmed that since September 2020, the Trust has a small team of part-time officers who work at the centre, providing strategic support to the academies.
25. The Trust has stated that this means that personnel files relating to current and former employees are held by the individual academies within the Trust. It does not hold personnel files centrally or have a central record of this information.

26. In order to locate the requested information, each school within the Trust would need to first identify the ethnicity of each member of current and former staff. The Trust stated that each school could search an electronic database of current employees. However, for former employees, the process for locating this information would involve searching through every personnel file held by each of the schools in order to establish the ethnicity of the person each file relates to.
27. The Trust stated that if a personnel or electronic file records an individual's ethnicity as "black", the person carrying out the search would then need to look through the entire file in order to understand the individual's "employment and career pay scale advancement" in accordance with the complainant's request. The Trust stated that this would involve searching for letters or other correspondence confirming any promotions or pay rises.
28. The Trust explained that the schools' records will be a mixture of hard copy personnel files and files that are held electronically, so the search would involve a manual search of files as well as an electronic search, depending on how the information is recorded in individual schools. It confirmed that a manual search would also need to be carried out on recruitment application forms and monitoring information to determine the ethnicity of applicants and the success rate.
29. The Trust has estimated that it will take between three and a half to five hours for someone to look through the personnel files located at each of the primary schools, and between four to six hours for someone to search through the records relating to secondary school employees.
30. The Trust has clarified that, on average, its primary schools have 23 staff, and its secondary schools have 109 staff. It stated that since the Trust was formed in 2012, some members of staff have left employment and recruitment has taken place.
31. In view of this, the Trust has stated that it could take between 17 and a half and 25 hours to search for the records at its primary schools, and between 24 and 36 hours to search for the records relating to secondary school employees. This equates to a figure between £1037.50 and £1525, both considerably over the £450 threshold.
32. The Trust has confirmed that it carried out a sampling exercise and asked schools for electronic information relating to current employees and for confirmation of whether they could provide other information. The Trust stated that officers within the Trust's central team have made extensive enquiries with the individual schools to understand how the information is held in order to form a reasonable estimate of the time it would take to locate and extract the information the complainant had

requested from individual files. It estimated that these enquiries alone have taken approximately 30 hours.

33. For the reasons outlined above, the Trust has stated that it remains of the view that the complainant's request cannot be answered within the cost threshold.
34. The Commissioner has taken into account the scope of the request, how the Trust holds the information, the searches the Trust has carried out, and the time the Trust has estimated it would take to carry out searches, which she considers to be reasonable. In the circumstances, the Commissioner is satisfied that it would take more than 18 hours for the Trust to comply with the request for information, and that the Trust is therefore entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request.

Section 16 – advice and assistance

35. Section 16(1) of the FOIA places a duty on a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information.
36. In its internal review response to the complainant, the Trust made no reference to the duty under section 16(1) – even to say that there was no advice and assistance on refining their request that it could offer the complainant on this occasion. However, the Trust did address this matter after the Commissioner's involvement asking it to revisit the request.
37. The Trust wrote to the complainant on 11 March 2021, confirming that it *"would be able to disclose the percentage of leadership positions in the 5 secondary schools across the Trust which are held by black employees currently working at the Trust. By this we would be referring to middle leadership and senior leadership positions. The information would be a Trust-level figure, not a breakdown based on the individual secondary schools within the Trust."*
38. The complainant responded to the Trust on 17 March 2021, asking why it was changing his request for information, which he rejected and requested the Trust stick to his original request.
39. The Commissioner notes that the Trust did try to assist the complainant in refining his request. However, given the way the Trust holds its staff personnel records in both paper and electronic form, the fact that any relevant information would only be held in these records, and the length of time it would take to review each file, the Commissioner does not consider the complainant's request could be meaningfully refined to

allow the information to be provided within the cost limit. As such, she is satisfied that there was no breach of section 16(1) of the FOIA.

Procedural matters

Sections 1, 10 and 17 – time for compliance

40. Section 1(1) of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and (b) if the information is held, to have that information communicated to them.
41. Section 10(1) of the FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt.
42. Section 17(1) of the FOIA states that where a public authority refuses a request for information, it must provide the applicant with a refusal notice explaining the exemptions relied upon and explain why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
43. In this case, the total time taken by the Trust to confirm that it held information falling within the scope of the request and provide the complainant with a refusal notice exceeded 20 working days. The Commissioner therefore considers the Trust to have breached section 1(1), section 10(1) and section 17(1) of the FOIA in this case.

Other matters

44. The Commissioner notes that the Trust's response to the internal review exceeded 40 working days. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working

days. The Commissioner therefore recommends that the Trust review the section 45 Code of Practice.¹

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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

Right of appeal

45. 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

46. 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.
47. 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

Pamela Clements
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