

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 March 2014

**Public Authority:** Her Majesty's Chief Inspector for Education and Training in Wales (Estyn)

**Address:** Anchor Court  
Keen Road  
Cardiff  
CF24 5JW

### Decision (including any steps ordered)

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1. The complainant has requested various items of inspection information in respect of all schools within the Welsh region for the last six years. Estyn confirmed that it held some of the information covered by the request, but refused it on the basis of section 12 of the FOIA. The Commissioner's decision is that Estyn has correctly applied section 12 of the FOIA and the Commissioner requires no steps to be taken.

### Request and response

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2. On 3 July 2013, the complainant wrote to Estyn and requested the following information:

*"...with regard to the reports you are preparing or have prepared for [named school]...I have requested all internal memos paperwork, reports, verbal notes, minutes of meetings..."*

*I ... now request the same for all schools within the Welsh region for the last 6 years..."*

3. Estyn responded on 12 July 2013. It confirmed that it held information relevant to his request but only in relation to more recent inspections. It further informed the complainant that it was relying on section 12 in respect of the information it holds.
4. Estyn also informed the complainant of its duty under section 16 of the FOIA to provide advice and assistance. It made reference to his on-going narrower request for this information in respect of a specific

school, which it confirmed was within the cost limit and for which it was in the process of providing a response.

5. Following an internal review, Estyn wrote to the complainant on 9 August 2013. It provided further details of its retention policy which the complainant had questioned and three estimates of the costs involved with complying with the request, the most conservative of which was £5,800. It also provided the complainant with further advice by pointing him in the direction of its website, which held historic inspection reports covering the period back to 2006.

## **Scope of the case**

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6. The complainant contacted the Commissioner 18 August 2013 to complain about the way his request for information had been handled. The complainant was not satisfied with the breakdown of costs which he considered unsubstantiated.
7. The Commissioner notes that the complainant also raised concerns regarding Estyn's record keeping referring to a Concordat between the Welsh Assembly Government and Estyn to provide a secure and digital database. These concerns are beyond the remit of the Commissioner under section 50 of the Act and therefore outside of the scope of his investigation.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds the appropriate limit**

8. Section 12 of the FOIA states that:  
  
*"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."*
9. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
10. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- (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.
11. In his assessment of whether Estyn has correctly relied on section 12 of the FOIA, the Commissioner queried the estimate provided to the complainant in the internal review as it was not clear how the various figures had been arrived at.
  12. Estyn confirmed to the Commissioner that since September 2010, it has used an electronic system called the 'Virtual Inspection Room' ('VIR) for managing many aspects of an inspection, including collecting, collating and recording inspection findings.
  13. Estyn confirmed to the Commissioner that a search of all files on the VIR is necessary in order to locate, retrieve and extract this information as the VIR also contains inspection data for further education, adult community based learning, local authority education services for children and young people, teacher education and training and work-based learning.
  14. Additionally, inspectors use judgement forms (JF), session observation forms (SOF) and evaluation forms (EF) to record their findings and judgements. Estyn further confirmed that where possible, inspectors complete the JFs electronically in the VIR. However, some inspection information which has not been recorded on the VIR will be retained by inspectors, for example, on laptops, emails or in hard copy.
  15. Estyn informed the Commissioner that schools also have an opportunity to communicate their response to an inspection through the Post Inspection Questionnaire (PIQ). Estyn analyses and retains the outcomes of PIQs in a PIQ database.
  16. Estyn has already determined that, in line with its retention policy, it does not hold relevant information for the full six year period covered by the request. Its retention policy requires inspection files to be destroyed six months post publication and its standard conditions of contract for inspectors requires inspectors to destroy inspection material that they retain three months after receipt of final payment.
  17. Estyn confirmed to the complainant in its internal review that it holds data from 3 January 2013 to 3 July 2013 (date of request) relating to 158 school inspections. It also confirmed that it holds inspector data relating to 113 school inspections for the period from 3 March to 3 July

2013. Its estimate therefore includes the time involved in locating, retrieving and extracting the information.

18. Estyn conducted a sample of three school inspections (one secondary and two primary) and provided three separate estimates (high, low and medium) to the complainant. However, following a request from the Commissioner, Estyn provided an average figure for the three schools sampled.
19. For each of the three schools, Estyn accessed the various areas of the VIR and timed how long it took to retrieve and extract the relevant data. Estyn then calculated the average time for obtaining each type of data contained in an average school inspection VIR.
20. It estimated that the average length of time taken for the required tasks was as follows:
 

• JF inspection data	6 minutes
• Reporting Inspector area	7 minutes
• Inspection Co-ordinator area	3 minutes
• Provider area	11 minutes
• Provider data	10 minutes
• Total	37 minutes

  - 37 minutes x 158 school inspections = 5,846 minutes or 97 hours.
21. Estyn also provided its estimate below for the information held outside of the VIR:
 

• Outlook emails	11 minutes
• Reporting inspector documents	30 minutes
• Team inspector	10 minutes
• Peer inspector	10 minutes
• Lay inspector	10 minutes
• Assistant Director and quality assurance team	10 minutes
• Total	81 minutes

  - 81 minutes x 113 school inspections = 9,153 minutes or 152.55 hours.
  - Total estimated cost = 250 hours x £25 = £6,250.
22. Estyn informed the Commissioner that this represents a conservative estimate as it does not include follow up inspections and inspections which have been subject to a complaint where information relating to an inspection is retained for a longer period. Neither does it include the PIQ data.
23. The Commissioner has considered the breakdown of costs provided by Estyn and considers that even if the time needed to carry out the

Reference: FS50521060



required tasks has been overestimated in any way, it is already so far in excess of the cost limit that he is satisfied that section 12 of the FOIA is engaged in respect of this request for information.

## Right of appeal

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24. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**