

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 November 2019

**Public Authority:** Department of Finance

**Address:** Information Management Unit  
Room 20, Dundonald House  
Upper Newtownards Road  
Belfast BT4 3SB

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Department of Finance of Northern Ireland ('DoF') relating to a recruitment process within the Northern Ireland Civil Service (NICS). The DoF refused the request, citing the cost limit as set out in section 12(1) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the DoF has correctly applied section 12(1) of the FOIA to the complainant's request and therefore requires no steps to be taken.

#### **Request and response**

3. The complainant on 28 November 2018 made a request for information to the DoF in the following terms:-
  - "1. All information relating to the development and implementation of policy for this Grade 7 competition;
  2. All information relating to the operation and delivery of this Grade 7 competition, including the development and scoring of the tests

3. All information relating to consultation with the relevant parties, including Trade Union Side, regarding the policy, operation and delivery of this Grade 7 competition;
4. All information relating to the decision not to provide for an appeal mechanism at any stage of this competition;
5. All information relating to the designated body assigned to deliver this competition, including any memorandum of understanding, data sharing agreement or standards of service;
6. All information relating to the verification, marking and moderation of the e-tray exercise, including any code of practice, guidance or regulatory principles followed;
7. All information relating to the training, guidance and supervision of the person(s) assessing my responses;
8. All information relating to the marking framework used by those persons to arrive at my scores;
9. All information relating to the issues regarding the delivery of the e-tray exercise including the technical difficulties faced, the expert advice received, and the resolutions arrived at;
10. The number of candidates who undertook the e-tray exercise;
11. The number of candidates who did not submit responses to all the tasks (i.e. part completed the e-tray exercise) in the permitted time;
12. The number of candidates afforded the opportunity to access their e-tray exercise for a second time; the number that accepted that invitation; the percentage of those candidates who scored highly enough to progress;
13. The number of candidates not afforded an opportunity to access their e-tray exercise a second time (or chose not to); the percentage of those candidates who scored highly enough to progress;

4. The DoF responded on 31 December 2018 providing some complete responses and some summary answers to the complainant's questions and stated that some of the requested information was not held by the DoF.
5. On 1 February 2019 the complainant sought an internal review of the DoF's handling of his request, in which he also clarified the scope of his request and in particular clarified that he was seeking information relating to the statistical variance between successful candidates who were afforded extra time and those who were not. The response to that request for internal review was provided to the complainant on 28 February 2019. The reviewer upheld the complainant's appeal, stating that his request for information had been treated more like a complaint about the recruitment process than a request under the FOIA, and said that the DoF should issue a fresh response to his request, taking into account the clarification in his internal review request of 1 February 2019 in compliance with the FOIA.
6. On 15 March 2019 the DoF issued a fresh response and refused to provide the remaining requested information, citing section 12 of the FOIA (the cost of compliance exceeds the appropriate limit) as the basis for doing so.

### **Scope of the case**

7. The complainant contacted the Commissioner on 15 April 2019 to complain about the way his request for information had been handled.
8. The Commissioner has considered the DoF's handling of the complainant's request, in particular its application of section 12(1) of the FOIA.

### **Reasons for decision**

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#### **Section 12 – cost exceeds appropriate limit**

9. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 ("the Fees Regulations") sets the appropriate limit at £600 for the DoF.

11. A public authority can estimate the cost of complying with a request using a figure of £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 24 hours of staff time in this case. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
  - (a) determining whether it holds the information;
  - (b) locating a document containing the information;
  - (c) retrieving a document containing the information, and
  - (d) extracting the information from a document containing it.
12. Information Tribunal decisions have made it clear that an estimate for the purposes of section 12 has to be 'reasonable' which means that it is not sufficient for a public authority to simply assert that the appropriate cost limit has been met; rather, the estimate should be realistic, sensible and supported by cogent evidence.
13. In evidence as to whether it has correctly applied section 12 of the FOIA in this case, the DoF provided a detailed estimate of the time/cost it would take for it to provide the complainant with the requested information.
14. The DoF has already determined that it holds the information requested, i.e. in a specific HR folder for that particular competition, and knows where it is located and how to retrieve the files. The folder is held by NICSHR and the statistical information requested by the complainant is held by the Northern Ireland Statistics and Research Agency (NISRA) which is an executive agency within the DoF. The DoF has informed the Commissioner that, in order to fully respond to the complainant's request, it would have to go through each file in the folder (7,663 files) to extract information from it.

15. The Commissioner is aware that, even at a conservative estimate of one minute per file (which was the estimate given by the DoF) to extract the relevant information, this would make the time taken on extracting that information far in excess of the staff time specified in section 12(1) of the FOIA, due to the number of files about the competition. The Commissioner notes that the DoF made the judgement that a sampling exercise was not required in order to come up with this estimate, however the DoF did state that a sampling exercise would be likely to have increased the estimated time taken. The complainant very clearly stated in the questions within his request that he was seeking *all information* regarding detailed aspects of that particular competition and reiterated this within his request for internal review. The DoF had previously attempted to assist the complainant by providing summary answers to the questions within his original request, but this was not accepted by him as being sufficient. The DoF has also consulted NISRA, who have stated that it would take a further 1.5 hours to go through its files and extract the statistical information sought by the complainant.
16. The DoF has clearly demonstrated that to respond to the complainant's request would take up an amount of staff time which is significantly in excess of the limit as set out in section 12(1) of the FOIA, which equates to 24 hours of staff time.
17. The Commissioner therefore considers that the DoF has correctly applied section 12(1) of the FOIA to the complainant's request.

### **Section 16 of the FOIA – Advice and Assistance**

18. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed to the provisions in the Code of Practice in relation to the provision of advice and assistance to bring the cost of a request under the appropriate limit. This can be found in paragraph 2.10 of the Code.

19. The DoF has informed the Commissioner that this competition resulted in a significant number of complaints, queries, FOI requests and Subject Access Requests (SARS). In its first response to the complainant, the DoF via NICSHR provided responses in respect of information readily held and tried to summarise the situation for the remaining information rather than exempting the full request as exceeding the cost limits. This was an attempt to be helpful and provide assistance to the complainant, which was acknowledged in the internal review report.
20. In relation to clarifying/refining the request to bring it under the cost threshold, the questions posed and the nature and context of the request means that it cannot be narrowed, as the complainant has specified on two occasions that he is seeking 'all information' about every aspect of his request. Although the complainant's request was not initially treated as a request under the FOIA, the Commissioner accepts that the DoF did try to help the complainant by providing summary answers to the questions asked.

## Right of appeal

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21. 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: 0870 739 5836  
Email: [GRC@justice.gov.uk](mailto:GRC@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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 .....**

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**