

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

### **Decision notice**

**Date:** 11 July 2023

**Public Authority:** The Governing Body of the University of Greenwich

**Address:** Old Royal Naval College  
Park Row  
London  
SE10 9L1

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

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1. The complainant has requested information from the University of Greenwich ("the University") in relation to disciplinary hearings. The University has refused to provide the requested information, citing section 12(1) of FOIA.
2. The Commissioner's decision is that the University was not entitled to reply on section 12(1) when refusing this request. The Commissioner also finds that the University did meet its section 16 obligations to provide advice and assistance to refine the request.
3. The Commissioner requires the University to provide a fresh response to the request, that does not rely on section 12 of FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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5. On 21 November 2022, the complainant wrote to the University and requested information in the following terms:
  - “1. Freedom of Information request:
    - Meetings, agendas, minutes and papers from Committees and Boards, which have been notified of all cases in relation to disciplinary hearings and appeal hearings, spanning over a period from today (21/22/22) and the last 5 years. The subjects do not need to be known due to GDPR, so this personal information can be redacted.”
6. The University responded on 13 December 2022. It stated that the information was withheld, citing section 12(1) of FOIA – cost of compliance exceeds the appropriate limit and section 40(2) of FOIA – personal information. The University advised the complainant to refine their request.
7. On 13 January 2023, the complainant refined their request to the following:

“I narrow my request to the year 2022 if the last 5 years cannot be retrieved.”
8. On 28 February 2023, the University responded to the complainant, advising that it was withholding the information, citing section 40(2) of FOIA – personal information.
9. Following an internal review the University wrote to the complainant on 29 March 2023. It stated that it was relying on section 14(1) of FOIA – vexatious and repeated requests. It also advised that it was maintaining its reliance on section 40(2) of FOIA.
10. During the Commissioner’s investigation, the University advised that it was no longer relying on section 14(1) of FOIA. It was now relying on section 12(1) of FOIA – cost of compliance exceeds the appropriate limit. It also explained to the Commissioner that should the complainant make a further refined request, it may rely on other exemptions.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 30 December 2022, to complain about the way their request for information had been handled.

12. The Commissioner considers that the scope of the case is to determine if the University was entitled to rely on section 12(1) of FOIA to refuse this request.

## Reasons for decision

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

13. 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.
14. When considering whether section 12(1) applies, the public authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
  - “(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.”
15. If the public authority estimates that compliance with the request would exceed the appropriate limit, it is not obliged to comply with the request. There is no public interest to consider. The limit for a public authority such as the University is 18 hours.
16. The University has explained that it carried out a sampling exercise which on average took over one hour to locate, retrieve and review the information requested for one calendar month. It explained that this is because, although the information is held electronically, relevant information considered by the panels involved in staff disciplinary hearings and appeal hearings are held by different parties within the University's Human Resources Directorate, and it would involve a number of manual searches.
17. The University explained that the search involved seven members of staff, searching electronic files, organised by employee name, which required review of each file held, to identify files in scope.

18. The University explained that in addition, much of the paperwork shared with the committees is provided in a scanned (and non-indexed) format, and is thus not searchable by its content to confirm or deny whether any individual document is relevant. It explained that it would require colleagues to manually review the contents for however many papers were provided for that period, many of which do not relate to disciplinary matters to find out what is within the scope of the request.
19. The University went on to explain that its approximate calculation of the time spent on the refined request is above 21 hours. It advised that considering the scope of the request had already incurred 11 hours and 25 minutes, which was to search for, locate and retrieve potentially relevant documents. It further explained that some documents that would be expected to be present appear to be missing, meaning that further time would be needed for search and retrieval, plus an onward review. It considered that the extra task would be a further hour.
20. The University also explained that before the documents could be disclosed, they would need to be reviewed and processed by the information compliance team, along with making sure the documents are segregated into those which can be disclosed and those which can't be. The University advised that it considers there is in excess of 240 further documents that would need to be reviewed, which would take approximately 90 seconds per document. It also explained that some documents may only take around 30 seconds to review, but a large proportion would also take several minutes to review to determine if they can be disclosed. The University advised that this would take approximately six hours to complete.
21. The University also explained that due to the highly sensitive nature of the documents, it would want to undertake a brief second review of the documents, which would take approximately 45 seconds per document, which would be a further three hours of work.
22. During the Commissioner's investigation, he asked the University to clarify what it was including within the time taken to obtain the information. The University confirmed that the estimated times provided are for locating, retrieving and extracting documents relevant to the request.
23. Whilst the Commissioner notes the University advises that the time stated does not include redactions, it has still advised that it would want to do further checks of the information. The amount of time that it states it would take to provide the information is just over 21 hours, which is marginally over the appropriate limit. The Commissioner is mindful that even a brief reduction in the reasonable estimate brings the cost under the limit of FOIA and is not convinced by the University's

insistence that three hours of work would be needed to re-check the documents. This sounds, despite the University's arguments to the contrary, as though the time may be spent considering the sensitivity of the information, which by definition does imply some consideration of whether other exemptions apply.

24. For the reasons outlined above, the Commissioner considers that this is a very borderline section 12 case and, as such, he is not satisfied that the University has provided a reasonable estimate of the time it would take to comply with the request. The Commissioner believes that the information could potentially be provided under the cost limit.
25. The Commissioner's decision is therefore that the University has failed to demonstrate that section 12 of FOIA is engaged as a basis for refusing the request.

## Right of appeal

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26. 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](mailto:grc@justice.gov.uk)

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

27. 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.
28. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**