

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2024

Public Authority: Pension Protection Fund
Address: 12 Dingwall Road
Croydon
London
CR0 2NA

Decision (including any steps ordered)

1. The complainant has requested a list of contracts of £10,000 or more. Pension Protection Fund ('PPF') provided links where some of the requested information could be found, advised that it was relying on section 43 of FOIA (commercial interests) to withhold information relating to investment contracts and that it was relying on section 12(1) (cost limit) to refuse the rest of the request.
2. The Commissioner's decision is that PPF was entitled to rely on section 12(1) of FOIA to refuse part of the request. The Commissioner finds that PPF complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps.

Request and response

4. On 23 January 2024, the complainant wrote to PPF and requested information in the following terms:

"Please can I request the following information under the Freedom of Information Act.

A list of all current contracts with an estimated value of £10,000 or more. For each contract please provide:

- title/subject matter
 - name of supplier
 - contract start date
 - contract end date
 - estimated/advertised value
 - actual spend in last complete financial year
 - actual total spend to date.”
5. PPF responded on 8 February 2024. It stated that there were 57 PPF contracts of value greater than £25,000 published online via the Governments Contracts Finder tool dating back to July 2015. It advised that it had a number of contracts relating to investment functions, but it was withholding these under section 43 of FOIA. It also advised that it had identified 217 other contracts not included in the previous categories, but it estimated that would not be able to provide this information within the cost limit.
 6. Following an internal review, PPF wrote to the complainant on 8 March 2024. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 11 March 2024 to complain about the way their request for information had been handled.
8. The Commissioner notes that the complainant did not challenge PPF’s reliance on section 43 of FOIA for some of the contract information and did not express dissatisfaction with the links provided to information that was already available. He has therefore not considered these aspects as part of his investigation.
9. The Commissioner therefore considers that the scope of his investigation is to determine whether PPF was correct to rely on section 12(1) to refuse the remainder of the request. The Commissioner will also consider whether PPF met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. 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” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
11. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. PPF relied on section 12(1) in this case.
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for PPF is £450.
13. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for PPF.
14. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
15. 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”. 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.

16. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
17. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

18. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked PPF to provide a detailed estimate of the time or cost taken to provide the information falling within the scope of this request.
19. In its submission to the Commissioner, PPF explained that it would need to review 217 contracts; each of which could take between 5-10 minutes to retrieve the requested information. At five minutes, this equates to 18 hours or £450, and at 10 minutes this equates to 36 hours or £900.
20. It explained that it would need to go through each contract, confirm the spend (estimated and advertised), review what is or was needed to be advertised (for example PPF publishes awards for above £30,000 that are not exempt), and it therefore concluded that a reasonable time estimate could be as much as 10 minutes per contract dependent on the complexity.
21. PPF explained that its Commercial Services team considered and tested whether the requested information could be retrieved within the 18 hours, it then provided the above estimation of time per contract. PPF added that, as part of their review, a member of the team spent over seven hours attempting to figure out how they might retrieve the data, and which information they could download to cross check between information sources. PPF concluded it would not be possible to retrieve the requested information within the cost limit.
22. Given the number of contracts that would need to be manually checked, the Commissioner considers that PPF estimated reasonably that it would take more than the 18 hour limit to respond to the remainder of the request. PPF was therefore correct to apply section 12(1) of FOIA to the remainder of the contract information in scope of the request.

Section 16(1) – The duty to provide advice and assistance

23. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
24. The Commissioner notes that, in its initial response and internal review response, PPF suggested that it could possibly provide the requested detail for a specific contract, or the complainant could narrow the range of contracts to try and bring their request within the cost limit.
25. PPF did advise however that it found it difficult to offer advice about refining the request as until the work to scope the request had been completed it would not know what work the contracts would require and what narrowed scope it could suggest.
26. The Commissioner is therefore satisfied that PPF did comply with section 16 of FOIA when dealing with this request.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

27. 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

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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