

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 April 2022

Public Authority: The Council of All Souls College of the Faithful Departed

Address: Oxford
OX1 4AL

Decision (including any steps ordered)

1. The complainant has requested emails between various parties at All Souls College (ASC) referring to Oak Circle Ltd over a specified time period. ASC refused the request as it considered it would exceed the cost limit under section 12(1) of the FOIA. It also considered section 40(2) would provide a basis for withholding some of the information.
2. The Commissioner's decision is that ASC has correctly refused the request under section 12(1), he has therefore not gone on to consider the application of section 40(2). However, ASC failed to fulfil its duty under section 16 to provide advice and assistance to the complainant.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant to assist in them submitting a refined request.
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

5. On 3 July 2020 the complainant made a request to ASC for information in the following terms:

"In the first instance I seek all emails from the email accounts above mentioned of [name redacted] which are via the university servers since 2001 to the present day 4 July 2020 that relate to Oak Circle Ltd and or mention Oak circle Ltd no matter to whom sent, be they solicitors, directors, banks, accountants, shareholders."

6. A second part to the request was treated as a subject access request under the Data Protection Act 2018 (DPA). The request then went on to ask for:

"In the third instance I seek the email communication of [name redacted] to the college including his copy of an email to a third party circa 5th November 2018 (11.59) to [name redacted] – in particular I wish to receive a copy of the emails [name redacted] refers to in the second paragraph of this email to [name redacted] of the 5th November 2018 (the name of the person is not mentioned but [name redacted] has confirmed it relates to me and any subsequent emails since November 2018 to the present that [name redacted] has written which mention my name or mention the name Oak circle Ltd."

7. The initial response from ASC on 10 August 2020 failed to recognise that parts of the request would be covered by the FOIA and instead the entire request was dealt with under the DPA.
8. On 5 November 2020 the complainant wrote to the Commissioner about the handling of his request and the Commissioner instructed ASC to respond under the correct legislation.
9. ASC responded to the complainant on 17 March 2021. ASC refused to provide the information at parts 1 and 2 of the request as it considered it would exceed the cost limit at section 12 to do so. No internal review was conducted as agreed by both ASC and the complainant.

Scope of the case

10. The complainant contacted the Commissioner on 5 November 2020 to complain about the way their request for information had been handled.
11. During the Commissioner's investigation ASC also sought to rely on section 40(2) as a basis for refusing the request.
12. The Commissioner considers the scope of his investigation to be to determine if ASC has correctly refused to provide the information in

parts 1 and 3 of the request under section 12 or section 40(2) of the FOIA.

Reasons for decision

Section 12 – cost of compliance

13. Section 12(1) of the 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”).
14. Section 12(2) of the 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. ASC relied on section 12(1) in this case.
15. 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 ASC is £450.
16. 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 ASC to deal with this request.
17. 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
18. 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

19. 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 the FOIA to consider whether there is a public interest in the disclosure of the information.
20. Where a public authority claims that section 12 of the 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 the FOIA.
21. As is the practice in a case in which the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked ASC to provide a detailed explanation of the estimation it had reached to calculate the time and cost of responding to the request.
22. ASC has stated that in essence the request was asking for emails sent or received by a named individual over a period of almost 20 years and emails sent by a different named individual over a two year period. This alone, in the view of ASC, makes it an extensive request.
23. Added to this, ASC has explained there are further complications as the information that has been requested is stored on the University of Oxford's servers. The University is a separate legal entity to ASC and ASC does not have automatic access to search the University's servers.
24. ASC can seek permission from the University and has done in the past but states that the volume of data returned from such a central search is vast and the time taken to go through such a data set is likely to be several days. ASC has conducted searches such as this for other information requests spanning much shorter time periods and found that significant amount of data were returned. As a result ASC's first port of call is to ask its staff and Fellows to conduct searches of their own email accounts for any relevant information.
25. In this case, as the request covered a large time period, and ASC cannot conduct central email searches itself, asking the individual concerned to conduct their own email checks would have placed considerable pressure on the manual search capabilities of the individual. ASC also argues that a search of nearly 20 years of emails would not be feasible to ask of the individual due to the storage limitations of ASC's inbox space. Archives

of emails for this time period are offline and not accessible to the individual and asking the University for access or to restore the information would take considerable time for the University and ASC and far exceed the cost limit.

26. The Commissioner often asks a public authority to conduct a sampling exercise to demonstrate the time/cost estimate it has calculated. In this case ASC has based its estimate on its previous handling of several information requests from the complainant. It estimated, based on its prior experience, that a sensible and realistic estimate was that compliance with the first and third parts of the request would exceed 18 hours. 18 hours of work would allow for only a little over 45 minutes for each year of emails requested and ASC argued that this would be insufficient time to locate, review and extract the requested information.
27. The Commissioner notes that the request did ask for emails that related to Oak Circle Ltd or mentioned the complainant's name or Oak Circle. The Commissioner considers that for more recent years of emails that have not been archived it may be possible to use keyword searches to return search results. However, it is likely the emails returned would still need to be read to determine if they do contain relevant information. This process may not be significantly time consuming but adding in the added time needed to access emails on the University servers it is clear that this would become a more manual and time-consuming task. The first part of the request alone covers nearly 20 years of emails and the Commissioner considers even a conservative estimate of the time needed to locate, retrieve and extract information relevant to the request when it is not stored by, or readily accessible to, ASC is going to significantly exceed the cost limit of £450 / 18 hours of staff time.
28. The Commissioner further accepts ASC has the knowledge from previous request handling to be able to make this judgement, having responded to a subject access request requiring similar searches of email accounts to be undertaken.
29. The Commissioner's overall conclusion is that ASC has estimated reasonably that to comply with the complainant's request would exceed the cost limit. ASC was therefore correct to apply section 12(1) of the FOIA to the complainant's request.
30. The Commissioner has therefore not gone on to consider the application of section 40(2).

Section 16 – duty to provide advice and assistance

31. Section 16(1) of the 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 practice in providing advice and assistance, it will have complied with section 16(1).

32. The Commissioner is not aware that ASC has provided any advice or assistance to the complainant to assist them in narrowing their request. Given the significant time period the request spans there does appear to be some advice or assistance that could have been offered to the complainant. He is therefore not satisfied ASC has met its obligations under section 16 of the FOIA.

Right of appeal

33. 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

34. 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.
35. 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

Jill Hulley
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