

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

### **Decision notice**

**Date:** 14 July 2015

**Public Authority:** University of Sheffield  
**Address:** Western Bank  
Sheffield  
S10 2TN

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

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1. The complainant has requested the university to disclose information relating to Employment Tribunal claims over a three year period.
2. The Commissioner's decision is that in relation to questions one and two of the request, the university does not hold any further recorded information to that already provided.
3. In relation to questions four and five, the Commissioner's decision is that section 12 of the FOIA does not apply.
4. The Commissioner therefore requires the university to take the following steps to ensure compliance with the legislation.
  - The university should reconsider questions four and five of the request again and issue a fresh response under FOIA without relying on section 12.
5. The university 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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6. On 11 November 2014, the complainant wrote to the university and requested information in the following terms:

“Q1 Over the last 3 years how many current or former university staff have submitted claims to the Employment Tribunal Service?

Q2 How many of these were settled prior to a full hearing date?

Q3 How many of these settlements involved the insertion of a confidentiality/non-disclosure clause in the terms of the settlement?

Q4 What is the total figure that has been paid in these settlements?

Q5 What has the total expenditure on legal expenses been in relation to the above disputes?

Q6 Over the last 3 years how many current or former staff have signed non-disclosure agreements purely in relation to the confidentiality of research activities?

Q7 Over the last 3 years how many current or former staff have signed non-disclosure agreements for reasons not covered above?

7. The university responded on 9 December 2014. It provided answers to questions one and two and in relation to questions four and five confirmed that it wished to rely on section 12 of the FOIA. All other questions were not addressed.
8. The complainant requested an internal review on 12 December 2014. She stated that the information provided for questions one and two did not answer the specific questions asked and she believed the figures provided for question one were inaccurate. She confirmed that the university had failed to address questions three, six and seven and wished to challenge the application of section 12 of the FOIA to questions four and five.
9. The university carried out an internal review and notified the complainant of its findings on 19 January 2015. It informed the complainant that its initial response was one it had given another applicant requesting information on the same subject. It took this approach to save resources and the need to divert additional time to addressing the specifics of her request. The university advised that it had now revisited the complainant's request and rechecked its records. It issued a fresh response addressing the questions in turn. It provided more information and what it confirmed were accurate figures at the date of writing. In relation to the complainant's questions about legal expenses, it provided the total expenditure per year on financial settlement but stated that it does not hold information on the legal expenses per case. No reference to section 12 of the FOIA was made.

## Scope of the case

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10. The complainant contacted the Commissioner on 28 January 2015 to complain about the way her request for information had been handled. In relation to questions one and two, the complainant raised concerns over the accuracy of the responses received. She stated that she had obtained information from another source which confirms that the university's responses are incorrect.
11. Concerning questions four and five, the complainant believed this information could be provided. She raised issues over the lack of transparency in relation to the university's financial accounting and confirmed that she found it difficult to believe that the university does not hold the legal expenses incurred on a case by case basis particularly as her other source revealed the university had multiple tribunal disputes over the period in question. The complainant believes the information in relation to questions four and five is held but the university does not wish to disclose it.
12. The Commissioner has no remit to consider the accuracy of information provided by a public authority. In cases such as this the Commissioner is limited to assessing whether a public authority holds any *further* recorded information falling within the scope of the request to that already provided. The Commissioner usually makes enquiries to the public authority concerned and from the submissions received will then make a judgement on whether, on the balance of probabilities, the public authority hold further recorded information or not. If the Commissioner considers that on the balance of probabilities the public authority holds further information he can order steps by way of a decision notice requesting that the public authority consider the request further. However, if the Commissioner considers that on the balance of probabilities no further recorded information is held there is nothing further he can do to assist the complainant and his involvement then ends. This is the approach the Commissioner has taken for questions one and two of the complainant's requests.
13. In relation to questions four and five, it was established during the Commissioner's investigation that the university holds the requested information. However, it is the university's position that it would exceed the cost limit prescribed by section 12 of the FOIA to comply with these elements of the complainant's request.
14. This notice will therefore address the university's application of section 12 of the FOIA to questions four and five of the request.

15. No complaint was made about questions three, six and seven of the request so these elements of the request will not be addressed in any more detail.

## Reasons for decision

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### Questions one and two

16. Initially the following figures were presented to the complainant:

2010 1

2011 0

2012 0

2013 13

And the university confirmed that none of the cases summarised above went to an Employment Tribunal.

17. The complainant challenged this at the internal review stage believing the above information is inaccurate. She stated that she was aware of at least one case in 2012 that was settled prior to a tribunal hearing and of at least five cases from the disputes in 2013 that actually ended up at tribunal.

18. The university responded again advising the complainant that the initial response she received was a copy of a response it had issued to another applicant requesting similar information. It stated that it considered the response to the other applicant would address her request. However, on further investigation and after rechecking its records, it then provided the following information:

2011 12      12 settled prior to hearing

2012 4        4 settled prior to hearing

2013 15      6 settled prior to hearing

This information was disclosed with the caveat that claims may still be ongoing i.e. not yet reached a hearing or settlement, or may have been withdrawn prior to a hearing.

19. The complainant maintains the latest data is still inaccurate and fails to provide the necessary figures for 2010. The complainant referred to another information request she made to the Leeds and Sheffield

Tribunal which produced different information. The information from the Leeds and Sheffield Tribunal highlighted that more cases went to a full hearing in 2010, 2011 and 2012 that the university quoted in response to her request. She believes it is 'inconceivable' that the university does not know the number of cases that went to a full hearing for the years in question, as these cases will have had an official judgement registered.

20. As stated above, in paragraph 11 above, the Commissioner has no remit to investigate the accuracy of information provided in response to an information request, He can however questions the searches undertaken by the university to establish whether on the balance of probabilities any *further* recorded information to that already provided is held.
21. The Commissioner has made detailed enquiries to the university in relation to this aspect of the complainant's request.
22. In relation to the first response it issued, the university confirmed that it provided the complainant with a copy of a previous response it had issued to another applicant who had requested similar information. It confirmed that this approach was taken to reduce the time and resources spent on addressing such requests. However, when the complainant challenged the response, the university reviewed the request again and undertook fresh searches of its records in order to answer the specific elements of the complainant's request. It explained that it was noticed at this point that the previous applicant's request had been interpreted more narrowly when compared to the complainants and this then resulted in the second response providing different figures to the first.
23. The university stated that it is confident that the second response issued contained the correct information which can be extrapolated from the recorded information it holds. It explained that it has never kept a record of the number of employment tribunal cases raised each year and nor is this information the type of information it has a statutory duty to report or to circulate within the university's governance structures. The university explained further that there is no single document that can be referred to or reproduced to answer this element of the complainant's request. Instead a full search of case files had to be carried out to determine the numbers given.
24. The university explained that the case files are kept individually by each HR Manager within the university and there are six roles in the organisation as each looks after a discrete section of the university. These members of staff have searched their sections thoroughly in order to cumulatively provide the requested information.

25. With regards to the complainant's issues that the second response did not provide figures for 2010, the university again explained that the first response was a copy of a previous response it issued to another applicant and when it reviewed the matter in more detail it noted that the complainant requested the information 'over the last 3 years'. In accordance with the scope of the complainant's request, it provided the information it holds for the years 2011, 2012 and 2013.
26. The Commissioner is satisfied that the university has explained why the figures in the two responses differ so greatly and acknowledged at the internal review stage that fresh searches tailored to the specific scope of these two questions should be carried out. The university confirmed that there is no single record or central location for this information. Each of the six HR managers within the organisation will hold any relevant information for their specific section. The university confirmed that all six HR managers have checked their own records and cumulatively these searches have produced the revised figures quoted in the second response.
27. The university confirmed that it has undertaken appropriate searches and explained the difference in responses. It is confident that it has provided the recorded information it holds falling within the scope of these elements of the complainant's request.
28. The Commissioner is therefore satisfied that the university has searched thoroughly and on the balance of probabilities provided the complainant with all the recorded information it holds. As stated above, this is no judgement on the *accuracy* of such information as this is not within the Commissioner's remit but rather a judgement on the searches undertaken to identify all relevant recorded information.

### **Questions four and five**

29. Questions four and five asked for the total figures paid in these settlements and the total expenditure on legal expenses in relation to these disputes. The university's initial response stated that it does not hold this information and to reconstruct the information from the records it does hold would invoke section 12 of the FOIA. It was however later identified that this response was a copy of another FOIA response to a different applicant who requested similar information.
30. At the internal review stage the university confirmed that it had reconsidered the complainant's request and undertaken fresh searches in accordance with the specific scope of her request. In relation to question four, the university confirmed that the requested information is in fact held and it released the total settlement figures for 2011, 2012 and 2013. However, this information was disclosed to the complainant

with the caveat that the figures relate to the payments made to all departing staff for reasons other than retirement. The figures therefore not only contain the employment tribunal cases the complainant is interested in but settlements made to staff for a variety of other reasons.

31. During the Commissioner's investigation the university confirmed that it could separate the settlements for employment tribunal cases from other cases but this would not be a trivial exercise and it would involve reviewing case files from the three years to compile the data for just the employment tribunal cases. The university confirmed that it estimated this task together with the task required to comply with question five would exceed the cost limit prescribed by the FOIA.
32. In relation to question five, the university again confirmed prior to the Commissioner's investigation that it does not hold the legal expenses relating to individual cases due to the nature of the university's corporate agreement with its legal services suppliers. In its initial responses to the complainant, the university explained that each contact is not individually billed and where invoices are received for specific pieces of work in contribution to cases, these do not identify cases by name. The university initially explained to the complainant that separate information is supplied by the solicitors' companies for verifying billing, to cross-reference with invoices, but this is not retained by the university once these checks have taken place. Instead it informed the complainant that the university does hold information on the total expenditure on legal costs, which covers all matters and such information is available on its website.
33. It was established during the Commissioner's investigation that the university does in fact hold information falling within the scope of this element of the complainant's request. In its response of 6 March 2015 the university confirmed that further investigations had been carried out and it had now identified that the separate information supplied by the solicitors' companies to enable the university to verify and cross reference with invoices has in fact been retained in an archive.
34. In a further letter of 8 May 2015 the university provided the Commissioner with 16 pages of invoices. These examples all appear to relate to employment disputes of some kind and in fact provided an itemisation of individual costs for specific cases. When the Commissioner questioned this with the university on 1 July 2015, the university was inclined to agree.
35. The university confirmed to the Commissioner that it wishes to rely on section 12 of the FOIA for question five in conjunction with question four of the request as detailed above. The university informed the



Commissioner that this is because the information is held in archive and is unstructured and a member of staff would need to review each record over the time period in question to determine whether it is relevant to this request. It considers the time it would take the university to do this added to the time it would take the university to comply with question four would exceed the cost limited prescribed by the FOIA.

36. The Commissioner will now consider the university's application of section 12 to these elements of the request.
37. Turning now to the application of section 12 of the FOIA, a public authority can refuse to comply with a request for information if it estimates that compliance would exceed the cost limit prescribed by the FOIA. The cost limit is £450.00 or 18 hours.
38. The university confirmed in its response of 6 March 2015 that it had included time already expended on answering each of the questions asked as follows:
  - Question 1 6 hours
  - Question 2 No additional time
  - Question 3 No additional time
  - Question 4 half an hour
  - Question 5 4 hours
  - Question 6 1 hour
  - Question 7 no additional time
39. The university explained that it included tasks such as locating, extracting and retrieving the information and for question 5 establishing whether it holds the requested information.
40. In this response it then estimated that it would take a total of six hours to comply with question four in the manner requested and five and a half hours to comply with question five.
41. In a further response by telephone on 16 March 2015 the university increased its cost estimation for question four to 10 hours.
42. In cases of this nature the Commissioner usually expects a public authority to explain how it has applied section 12 of the FOIA to a particular request. The Commissioner usually expects a public authority to provide some form of evidence to support its application of this



exemption and this often takes the form of a sample of the requested information from which the actual estimation has originated.

43. The Commissioner has received no such supporting evidence in this case and has in fact received two different estimations for question four of the request.
44. Although there is no statutory requirement to supply such evidence under the FOIA, the Commissioner is of the view that without it, it is difficult for him to make any form of assessment.
45. It is also the Commissioner's view that time already taken to deal with a request cannot be taken into account when calculating an estimation of the cost of compliance. These are not permitted activities under section 12 of the FOIA. The university's calculation in paragraph 36 above cannot therefore be taken into account.
46. The remaining hours the university has calculated to comply with questions four and five of the request does not exceed the cost limit. Whether the Commissioner accepts six or 10 hours for question four and five and a half hours for question five, the combined total does not exceed the 18 hour threshold prescribed by section 12 of the FOIA.
47. For the above reasons, the Commissioner has concluded that section 12 of the FOIA does not apply to questions four and five of the complainant's request.

### **Other matters**

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48. The Commissioner considers in this case that some of the key issues have stemmed from the university's initial response, which was not a direct response to the complainant's request but a copy of a response it had issued previously from another applicant who requested similar information. The Commissioner believes this approach was not best practice and resulted in the complainant raising valid concerns over the accuracy and transparency of information. The Commissioner considers that it would be best practice to consider each and every request on its own merits and issue separate responses to each addressing the specifics of a request from the outset. He believes this approach would prevent similar issues arising again in relation to future requests.

## Right of appeal

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49. 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@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)

50. 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.
51. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**