

## **Freedom of Information – Internal Review Decision**

**Internal Reviewer:** John Brown, Company Secretary

**Reference:** IR07-14

**Date:** 27/11/2014

**Original Request:** Received by A Patterson ("AP") by email dated 03/10/2014

*"For questions 1 to 5, please provide data by year, from the introduction of Mortgage Style Student Loans until as recently as possible:*

- 1) How many borrowers were granted deferment on their loans?*
- 2) How many borrowers have been rejected for deferment on their loans?*
- 3) How many borrowers have had an application for deferment rejected because they did not use a Deferment Application Form?*
- 4) How many borrowers have had an application for deferment accepted without using a Deferment Application Form?*
- 5) How many borrowers have had a request for a deferment application form refused by SLC staff?*
- 6) Do you keep transcripts or logs of all phone calls between borrowers and SLC staff? If so, for how long are these records held by SLC?*
- 7) Please provide me with all email correspondence between SLC staff in relation to SLC staff refusing loan deferment applications for any reason whatsoever.*
- 8) Has Student Loans Company liaised with Erudio Student Loans in relation to the development and implementation of the Deferral Application Form that has been used by Erudio Student Loans?"*

**Original Response:** Issued 30/10/2014

The original request was refused under section 12(1) of the Freedom of Information Act ("FOIA") – the appropriate costs limit exemption. The response explained that question 7 alone would exceed the appropriate costs limit.

Advice and assistance was provided, confirming that all of the other questions could be answered within the appropriate costs limit.

**Request for Review:** Received 30/10/2014

*"I am writing to request an internal review of Student Loans Company Limited's handling of my FOI request 'Deferment of Mortgage Style Student Loans'.*

*In response to the same questions asked by another user of Whatdotheyknow.com, SLC stated:*

*"Requests 1 and 2 – deferment statistics showing the number of rejected accepted, incomplete and deferment applications can be provided for the years we hold records for. Please note that records are not held for all years. Copies of correspondence would still fall under the appropriate costs limit and/or answers to questions, confirming what we do and do not record", details here:*

<https://www.whatdotheyknow.com/request/230825/response/568247/attach/html/2/FOI%20response%20to%20J%20Wild%20requests.pdf.html>

*I have made the same requests for information as the other user's requests 1 and 2, yet you have now indicated that my FOI request exceeds the cost limit, which contradicts your response to the other user.*

*Could you please therefore review my request to determine the actual cost of providing the information. If the cost limit would in fact be exceeded, then please provide the requested information, excluding that requested under question 7.*

*Also, the ICO's guidance on time limits for compliance under the FOIA states:*

*"Authorities should regard the 20 working day limit as a 'long stop', in other words the latest possible date on which they may issue a response. It also follows that an authority which provides its response close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to comply with the request".*

*As SLC has taken the maximum 20 working days to respond to my FOI request, and had previously responded to another user regarding an identical request, could you please account for, and justify, the length of time taken to respond to my request."*

#### **Issues to be considered in Review:**

I will consider the following issues as part of my review:

- (1) whether the original response contradicts a previous freedom of information ("FOI") response;
- (2) what the estimated cost of complying with the original request is;
- (3) whether the original request was correctly refused under section 12(1) of the FOIA;
- (4) whether appropriate advice and assistance has been provided under section 16 of the FOIA; and
- (5) in addition, I will provide a justification of the time taken to respond to AP's request.

#### **Review:**

##### **(1) Whether the original response contradicts a previous FOI response**

Having reviewed the response to the series of related FOI requests submitted by another whatdotheyknow.com user, at <https://www.whatdotheyknow.com/request/230825/response/568247/attach/html/2/FOI%20response%20to%20J%20Wild%20requests.pdf.html>, the response confirmed that while deferment statistics could be provided, the provision of copies of correspondence fell within the scope of the appropriate costs limit exemption under section 12 FOIA. It was on this basis that the response issued to AP on 30/10/2014, explained that the question asking for copies of email correspondence fell under the costs limit exemption.

My conclusion in relation to this issue is that I do not find the response which was issued to AP on 30/11/2014 contradictory to the response which was issued to the other whatdotheyknow.com user. My finding is that the same questions were asked and the same answers provided.

## **(2) The estimated cost of complying with the original request**

Section 12 of the FOIA provides that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

The legislation does not make any reference to the actual cost of complying, as requested by AP. SLC is only obliged to provide an estimated cost.

The very nature of any request for copies of correspondence which is not limited to (i) specific timeframe; or (ii) particular members of staff; is considered to be too wide-ranging for the purposes of FOI requests. By way of background, SLC use software called Lotus Notes and our Senior Lotus Notes Developer has provided a detailed explanation of the work involved in attempting to comply with question 7 of AP's request alone, and has confirmed an estimation that the minimum amount of time in an absolute best case scenario and subject to several caveats which it would take to comply with question 7 alone would be in excess of 200 hours. This would result in a minimum total estimated cost of £5,000 for question 7 alone.

The other questions can be answered within several hours, and as AP has requested these be answered, our response can be found in Appendix 1 to this decision.

## **(3) Was the original request correctly refused under section 12(1) of the FOIA?**

Section 12 of the FOIA provides that:

*"Section 1(1) does not oblige a public authority 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 a public authority for the purposes of the FOIA, SLC can refuse an FOI request if it estimates that meeting the request would exceed the appropriate costs limit.

The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The costs limit applicable to SLC is £450, which equates to 2.5 days (18 hours) of work at a rate of £25 per hour.

In line with guidance issued by the Information Commissioner's Office ("ICO") ("*Requests where the cost of compliance with a request exceeds the appropriate limit*", page 4, paragraph 9 which is available at [http://ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](http://ico.org.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.pdf)), when calculating costs SLC may only take into account the cost of the following activities:

- determining whether the information is held;
- finding the requested information, or records containing the information;
- retrieving the information or records; and
- extracting the requested information from records.

The aforementioned ICO guidance goes on to confirm, on page 9, paragraph 32 that:

*"As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit."*

As question 7 of the original request alone fell to be exempt under the appropriate cost limit exemption, in line with the ICO's guidance, SLC's FOI Office was correct to refuse the whole request,

Although 7 out of the 8 questions submitted by AP can and could have been answered by the FOI Office, I am content that the original request was refused under section 12(1) of the FOIA.

#### **(4) Was appropriate advice and assistance provided under section 16 of the FOIA?**

Section 16 of the FOIA places a duty on public authorities to provide reasonable advice and assistance to applicants. A public authority is to be taken to have complied with this duty in any particular case if it has conformed with the provisions of the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 (<https://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>) ("Section 45 Code of Practice") in relation to the provision of advice and assistance. Paragraph 14 of the Section 45 Code of Practices provides that:

*"14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee"*

The original response dated 30/10/2014 explained to AP why his original request was being refused, and advised that 7 out of 8 original questions submitted could be answered within the appropriate costs limit.

Where a request for information is refused under the appropriate costs limit exemption, public authorities are not obliged to answer any of the questions, rather they should provide the requestor with advice and assistance.

By advising AP of what questions could be answered, which clearly met the majority of the original request, the provisions of paragraph 14 of the Section 45 Code of Practice

were clearly met by the response. Consequently, I am satisfied that appropriate advice and assistance was provided under section 16 of the FOIA.

**(5) Justification of time taken to respond to original request**

The original request was received on 03/10/2014 and responded to on 30/10/2014. The time period from receipt until response was therefore 19 working days, not 20 as alleged by AP.

SLC's FOI Office is part of the Legal & Compliance Department. At present, only one member of staff responds to FOI requests. The member of staff in question does not respond exclusively to FOI requests, rather responding to FOI requests is only one of many duties, which have increased dramatically since July 2014.

SLC received 85 FOI requests between the months of July and October 2014, all of which have been dealt with by the aforementioned member of staff, and all were responded to within the statutory timescale of 20 working days after receipt.

SLC's FOI Office is familiar with the ICO's views on responding to FOI requests, and as a matter of practice FOI responses are not issued on, or close to, the 20<sup>th</sup> working day. Due to the current workload of SLC's FOI Officer, FOI responses are responded to in date order of receipt, to ensure that all responses are issued within the statutory timescales, albeit in the majority of cases, this can be on, or close, to the 20<sup>th</sup> working day.

We are also currently taking steps to increase staffing within the Legal & Compliance Department, including additional support to be provided to the FOI Office.

**Decision:**

Having reviewed AP's original request dated 03/10/2014, and the FOI file history, I am satisfied that the original response was correctly issued, therefore I uphold the original decision.

By virtue of our response to the other whatdotheyknow.com requestor, it should have been clear to any other requestor asking the same or similar questions, exactly what questions we could respond to within the appropriate costs limit.

As AP has requested a response to the other 7 questions, a response to these questions can be found in Appendix 1.

**Right of Appeal:**

AP, if you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane, Wilmslow  
Cheshire SK9 5AF



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**John Brown**  
**Company Secretary**  
**Student Loans Company Limited**

Dated: 27 November 2014