

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 19 January 2011**

**Public Authority:** The Governing Body of Buckinghamshire  
New University  
**Address:** High Wycombe  
Buckinghamshire  
HP11 2JZ

### Summary

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The complainant made a number of requests to the public authority through his website. Four requests were referred to the Commissioner and have been considered in this case. The public authority applied section 12(1) [the costs limits] to these four requests. It explained that it believed that the requests could be aggregated with four other requests the complainant had made and that the work needed to respond to all eight requests would exceed the costs limit of £450.

The complainant complained to the Commissioner. The Commissioner has determined that the four requests can only be aggregated with two others. However, he has found that the work that would be required to answer those six requests would exceed the costs limit and the exclusion found in section 12(1) has therefore been applied appropriately by the public authority.

He has found that there was a procedural breach of section 16(1). This is because the public authority failed to offer reasonable advice and assistance about how to narrow the requests down at the time of its refusal notice. He does not require any remedial steps to be taken in this case.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## Background to the requests

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2. The complainant has set up a website that aims to be able to provide a service which allows interested individuals to request relevant recorded information from every member of staff of a university. In addition, it provides the facility to request the same information from every university in the country simultaneously.

## The Request

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3. The complainant made a number of requests for information. These included the four requests for information that are the subject of this case. Two were made on 26 April 2010 and two were made on 28 April 2010. A full copy of the requests can be found in Appendix A which is attached to the bottom of this Notice (numbered requests 1 to 4).
4. On 29 April 2010 the public authority issued its response. It explained that having aggregated the requests it had received within the last 60 days it has estimated that the work it was required to undertake in order to comply with these requests exceeded the appropriate limit of 18 hours (or £450). It clarified that it had undertaken the following work in respect to earlier requests for information:
  1. 10 hours work in respect to non-disclosure agreements (a request which was responded in full after the Commissioner's intervention) [the request was dated 10 March 2010];
  2. 3 hours in respect to a request for all the staff email addresses (a request that was still ongoing) [the request was dated 26 April 2010];
  3. An estimated 5 hours work in respect to a request for work place bullying and harassment [the request was dated 26 April 2010]; and
  4. 3 hours in respect to a request in relation to suspended staff (a request which was responded to in full) [the request was dated 29 April 2010].
5. A copy of these four requests for information can be found in Appendix B, which is also attached to the bottom of this Notice (these are numbered requests 5 to 8). The public authority explained that complying or being in the process of complying with these four

- requests has meant that the appropriate limit has already been reached and that it was excluded from complying with the four later requests referred to in paragraph three (as listed in Appendix A).
6. Later that day, the complainant wrote to request an internal review. He said that aggregation was not appropriate as the requests were not for similar information and this was a requirement to apply section 12(1). He explained that in his view the requests cover entirely different topics. He also explained that he had made the same requests to all the other universities in the country who had not raised the issue of aggregation that led to the application of the costs limit.
  7. On 6 May 2010 the public authority explained that its response was based on its understanding of the relevant guidelines and regulations. It explained that it had also received advice from the ICO in respect to their operation. For clarity, the Commissioner notes that he had provided general advice about the Fees Limit but not about aggregation. The public authority explained that the similarity between the requests was that they were all related to staff and staff operations. It then cited the relevant parts of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations"). The Fees Regulations will be discussed in detail in the analysis section of this notice. The Commissioner is satisfied that the second response serves as an internal review in this case.

## The Investigation

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### Scope of the case

8. On 8 May 2010 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - That the requests covered entirely different topics and that invoking section 12(1) was inappropriate; and
  - That the original requests were sent to a number of universities simultaneously.
9. On 13 July 2010 the Commissioner wrote to the complainant. He confirmed that this case would consider only the four requests outlined in Appendix A. He said he would make a decision about the operation

of section 12(1) specifically in relation to these requests. He confirmed that the earlier requests would be considered where they are relevant to his consideration of these later requests. The Commissioner is also aware that there may be later requests and he has not considered these in this case.

## Chronology

10. On 13 July 2010 the Commissioner also wrote to the public authority. He explained that this complaint was eligible and asked for the public authority to provide relevant evidence to support its position.
11. On 14 July 2010 the public authority acknowledged this email and sent the Commissioner a copy of all the correspondence that it had exchanged with the complainant in respect to the relevant requests.
12. On 30 July 2010 the Commissioner wrote to the complainant to confirm that the case was now under active investigation and to explain the test he applies when considering whether or not requests should be aggregated in section 12(1) cases. He asked whether the complainant wished for the investigation to continue. Later that day, the complainant explained that he did want the investigation to continue and explained why.
13. On 2 August 2010 the Commissioner made detailed enquiries to the public authority.
14. On 27 August 2010 and 13 September 2010 the public authority provided the Commissioner with answers to those enquiries.
15. On 15 January 2011 the complainant made further arguments to the Commissioner. He explained that he believed that the Commissioner should in his view see the aggregation point as being analogous to how he considers repeated requests under section 14(2) as outlined in his previous Guidance.<sup>1</sup> Or alternatively, he argued that the public authority has used too broad headings to enable the Commissioner to deem the requests as being similar and that this was inappropriate. He explained that, in his view, the requests must partially overlap to be

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<sup>1</sup> The guidance cited by the complainant was the 3 December 2008 guidance entitled 'vexatious or repeated requests', which can be found at the following link: [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)  
The Commissioner has recently revised this guidance and entitled it 'When can a request be deemed vexatious or repeated'. The new guidance can be found at the following link: [http://www.ico.gov.uk/~/media/documents/library/Freedom\\_of\\_Information/Detailed\\_speci alist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/~/media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

deemed similar as otherwise the information requested should be deemed dissimilar.

## Analysis

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### Substantive Procedural Matters

16. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the total cost of complying with the request would exceed the 'appropriate limit'. Section 12(2) provides that a public authority can refuse a request if the cost of complying with section 1(1)(a) alone (that is the cost of confirming or denying whether the information of the description specified in the request is held) would exceed the 'appropriate limit'.
17. The Fees Regulations provide that the cost limit for public authorities is £450. This is calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
18. The Information Tribunal (the 'Tribunal') in *Quinn v Information Commissioner & the Home Office* [EA/2006/0010] explained this point in this way (at paragraph 50):

*'The fact that the rules drafted pursuant to s.12 have the effect of defining what is a reasonable search and the amount of time and money that a public authority are expected to expend in order to fulfil their obligations under the Act, serves as a guillotine which prevents the burden on the public authority from becoming too onerous under the Act.'*

19. In this case the public authority's position is that while it holds some information of the description of the requests (outlined in Appendix A of this notice), it is not required to provide this information because the aggregate work that it would be required to undertake would exceed the costs limit of 18 hours. Indeed, it explained that it had already carried out work that exceeds the costs limit in respect to these requests. Its position therefore is that in order to comply with the requests it would have to undertake work beyond the costs limit. Its view therefore is that section 12(1) applies and no work should be required to be done.

20. The Commissioner is therefore required to consider the application of section 12(1) in this instance. For clarity, there is no public interest element to consider when looking at section 12(1). It serves merely as the costs threshold and does not provide any statement about the value of any request for information.
21. The Commissioner's investigation into the application of section 12 will have three parts. The first part considers whether the requests should be aggregated or considered individually for the purposes of section 12. The second part considers what the estimates for the work that is required are and whether they were reasonable. The final part will provide a conclusion about whether the Commissioner considers the costs limit would have been exceeded in this case.

*Should the requests be aggregated or considered individually for the purposes of section 12?*

22. When considering whether requests can be aggregated or need to be considered individually the Commissioner is guided by Regulation 5 of the Fees Regulations which can be found in the Legal Annex attached to the bottom of this Notice.
23. This states that there are three conditions for a public authority to be allowed to aggregate requests for the purpose of the Fees Regulations. They are:
  1. The request must be made by one person, or by different persons who appear to the public authority to be acting in concert;
  2. The requests must be received by the public authority within any period of sixty consecutive working days; and
  3. The requests must relate to any extent to the same or similar information.
24. The first condition is satisfied as all eight requests were made by the complainant.
25. The second condition is only satisfied for requests 1-4 and 6 - 8. The Commissioner has therefore concluded that the work required for request 5 cannot be included when considering whether the work can be aggregated.
26. The third condition requires the Commissioner to determine whether the seven remaining requests (or an appropriate combination including requests 1-4) relate to any extent, to the same or similar information.

The interpretation of this part of the Fees Regulations has been considered by the Information Tribunal in *Ian Fitzsimmons v Department for Culture, Media and Sport* [EA/2007/0124] ('Fitzsimmons'). The Tribunal made the following general observation at paragraph 43:

"The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate *to any extent* to the same or *similar* information [Tribunal emphasis]".

27. In order to assess what is meant by *similar* the Commissioner has also looked at the Oxford Shorter English Dictionary which defines it as:

*'Having a resemblance or likeness: of the same kind.'*

28. The Commissioner takes the view that requests will be 'similar' where there is an overarching theme or common thread running between them in terms of the nature of the information that has been requested.

#### *The complainant's arguments*

29. The complainant has argued that the requests he has submitted have real diversity and that the public authority was wrong to believe that it can aggregate the work that it has undertaken in this case in answering his requests. As noted above, he explained that his view was that the requests must require overlapping work to be done to be correctly deemed as being similar.

#### *The public authority's arguments*

30. The public authority has offered two different reasons about why it was right to rely on the costs limits. They can be summarised as:
- (1) It was entitled to aggregate all the work necessary to answer requests 1 to 8 because they are all enquiries for information relating to policies or regulations of the university; and
  - (2) Alternatively, it can aggregate requests 1 to 4 together and requests 5 to 8 together. Each set of requests would then exceed the costs limit and its position could be upheld on that basis.

#### *The Commissioner's view*

31. The Commissioner has considered the first argument that all eight requests could be said to relate to each other because they are all

- enquiries for information relating to policies or regulations of the university.
32. The Commissioner has excluded request 5 already because it was outside the time limit. The Commissioner also finds that he is not satisfied that request 6 can be correctly said to be an enquiry for information relating to policies or regulations of the university. He therefore excludes this request from the work that can be aggregated together.
  33. However, the Commissioner has been satisfied that it is appropriate to aggregate the work required to answer requests 1, 2, 3, 4, 7 and 8 as all six of these requests have an overarching theme. These six requests can be correctly viewed as similar to some extent as they are enquiries for the policies or regulations and/or how they operate in the University.
  34. The Commissioner will therefore consider the aggregate work required to answer those six requests below.
  35. For completeness, the Commissioner also considered the second set of arguments the public authority offered. To recap, it argued that it should be allowed to aggregate the time take to respond to requests 1 to 4 alone and requests 5 to 8 alone, both of which would exceed the costs limit.
  36. For requests 1 to 4 (those directly under consideration in this case) it explained that the information all related to some extent to the same information because:
    - They are each enquiries for information of or relating to policies or regulations of the university; and
    - They are each enquiries for information of or relating to formal documents of the university.
  37. The Commissioner has considered the nature of these four requests for information and considered whether the arguments above are sufficient to indicate that there is an overarching theme to render the requests similar to any extent. His view is that he agrees that the four requests are enquiries for the policies or regulations and/or how they operate in the University. He therefore has determined that these requests satisfy the threshold outlined by the Tribunal in *Fitzsimmons* and the work required to answer them can be appropriately added together.



38. For requests 6, 7 and 8 (those that preceded the requests for information) the public authority explained that the information all related to some extent to the same information because:
- o They are each enquiries for information of or relating to personal/private staff information; and
  - o They are each enquiries for information of or relating to policies/regulations of the University.
39. The Commissioner has considered request 6, 7 and 8 and considered whether the arguments above are sufficient to indicate that there is an overarching theme to render the requests similar to any extent. His view is that he agrees that the three remaining requests are enquiries for staff information. He therefore has determined that these requests satisfy the threshold outlined by the Tribunal in *Fitzsimmons* and the work required to answer them can be appropriately added together.
40. The Commissioner only needs to be satisfied that the costs limits can be applied appropriately on the basis of one reasonable estimate. He has therefore decided to focus the remainder of this analysis on the first way work can be aggregated (the work required to answer requests 1 to 4 [those subject to this complaint] along with requests 7 and 8).

*What are the estimates for the requests that can be aggregated and are they reasonable estimates?*

41. The Commissioner must determine whether he believes that the estimate provided by the public authority was reasonable. The issue of what constitutes a reasonable estimate was considered in the Tribunal case *Alasdair Roberts v the Information Commissioner* [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:
- *“Only an estimate is required”* (i.e. not a precise calculation);
  - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3);
  - Time spent considering exemptions or redactions cannot be taken into account;
  - The determination of a reasonable estimate can only be considered on a case-by-case basis; and
  - Any estimate should be *“sensible, realistic and supported by cogent evidence.”*

42. The above extract references Regulation 4(3), which states that the only activities that are allowed to be considered are those where it is:

*“(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.”*

43. The public authority has provided the Commissioner with a detailed and reasoned estimate about why it believed that the processing of these requests would exceed the costs limit. It broke its estimate down into the relevant activities and this breakdown is copied below [it indicated the work that had already done through using asterisks]:

Time taken:	Time taken (in hours) for the following activity in the Fees Regulations:				
Req.	(a)	(b)	(c)	(d)	<b>Total</b>
1	1	2	2	2	7
2	1	2	1	6	10
3	2	2	3	7	14
4	1*	1*	4*	4*	10*
7	1.5*	0.5*	0.5*	0.5*	3*
8	1*	2*	1*	1*	5*
<b>Total</b>	<b>7.5</b>	<b>9.5</b>	<b>11.5</b>	<b>20.5</b>	<b>49 (18*)</b>

44. The Commissioner also asked the public authority to provide him with a detailed explanation about how it came up with the above estimates.

45. The public authority explained that to understand the estimates it was necessary to understand how it holds information:

- Currently each department within the university holds its own documents within their offices;
- Where the document ceases to be active (so it is not in use and not needed to be kept for legal reasons), information is destroyed;
- Where the document is no longer used but is needed for legal reasons it is moved into the public authority's archives;

- Those documents are kept in the archive for a year, where their use is monitored. If they are not much used, then they get moved to an offsite facility;
  - Information is kept in storage boxes that measure 45cm x 39 cm x 29 cm; and
  - The boxes themselves and the files within those boxes are catalogued, but the contents of the files are not.
46. The public authority then explained what work would be required to process each of the six requests that have been aggregated here. The Commissioner has summarised these explanations:
- Request 1 – the public authority explained that its list of formal documents and policies will show which may relate to Terrorism Legislation. It would also need to review the reading lists for any courses that may potentially contain references to terrorism and would interview key members of academic and support staff by Department to ensure that everything relevant was found;
  - Request 2 – the public authority explained that it did not need to access documents, but it would spend time extracting the content of the blocked lists;
  - Request 3, 7 and 8 – the public authority explained that the process was the same for these three requests. The first step would be to use the casework index which relates to HR files for the last eighteen months. This will identify those staff where a relevant investigation was conducted in the last eighteen months. Any investigation before then would only be referenced to within the personnel files. There are 31 standard boxes containing leavers covering the years from 2007 onwards. Within those boxes there are around 15 files. Each of these files would require considered searching for casework details, identifying whether it fits the criteria and extracting the information requested. The situation is further complicated because there was a flood and the 2007 and 2008 HR files are presently being dried and restored by a third party;
  - Request 4 – the public authority explained that the grants would appear in its accounts. It would therefore search each set of year end accounts to obtain a list of Research grants. The list of Research grants can then enable it to search its manual records. It would then be required to find the August 2009 to December 2009 information in a different way as the accounts for 2009/10 have not yet been finalised.

47. The Commissioner has carefully considered the submissions given for each request to determine whether the time that has been apportioned to the tasks would be necessary and the estimate reasonable. He is satisfied that the estimate that he has received considers only activities that are allowed by Regulation 4(3) (these activities are stated in paragraph 41 above). He also considers that the estimates accord with the work that would need to be done to process the six requests.
48. In addition to its estimate, the public authority explained the work that it had undertaken to evidence that its minimum estimate was reasonably arrived at on the facts of this case. It clarified that the individual member of staff had noted that the work undertaken doing only the requests that have been aggregated already amounted to 18 hours work. This did not include the other time that it had taken to process requests 5 and 6.
49. In order to consider whether the estimated time is calculated in a reasonable manner, it is necessary for the Commissioner to be satisfied that there were no reasonable alternatives that would render it otherwise.
50. When considering this issue the Commissioner has been guided by the Information Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0042]. In this case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database that contained the elements of what was requested. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However at paragraph 15, the Tribunal also made the following more general comments on alternative methods of extraction:

*“(a)...the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;*

*“(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate... ”*

51. Those circumstances were set out at paragraph 13 where it was said:

*“...it is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the*

*alternative or had it drawn to its attention by the requestor or any other third party..."*

52. The Commissioner has considered how the public authority holds relevant recorded information and considers that the methods of extraction that have been specified amount to the most efficient way of locating and extracting the information that has been requested from the six requests. The Commissioner is content that there are no obvious alternatives in this case that would render the estimate unreasonable. The Commissioner is therefore satisfied that it was reasonable in this case to rely on an estimate based on obtaining information through checking those records.

*Conclusion – would the costs limits be exceeded in the processing of this request and has section 12(1) been appropriately relied upon?*

53. In summary, for section 12(1) to be relied on appropriately the Commissioner must be satisfied that a reasonable estimate for the work required to process the six requests would exceed 18 hours.
54. The Commissioner is satisfied that the work required to process the six requests would exceed 18 hours. He has come to this conclusion through considering how the records are held, how the requests are worded and the work that has already been conducted.
55. It follows that the public authority has applied section 12(1) appropriately in this case and the Commissioner supports its application on these facts.

## **Procedural Requirements**

### *Section 16(1)*

56. Section 16(1) (full text in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
57. The Commissioner is satisfied that the requests were clear in its context. Therefore paragraphs 8 to 11 of the Code did not require additional assistance to be provided in this case.

58. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code. In this case the Commissioner has considered whether it would have been reasonable for the public authority to have advised the complainant to reduce the scope of his request.
59. The public authority has argued that it has already provided 21 hours time responding to requests 5 to 8 and this should demonstrate to the Commissioner that it has acted reasonably in respect to requests 1 to 4 that are being considered here.
60. The public authority explained that the advice it would provide to the complainant would be that he should consider the resource implications of his requests. In this case, he made multiple complex requests over a very short period of time and the public authority explained that the complainant should have considered either simplifying them or spacing them over a longer period.
61. The public authority has also indicated that the context of this request must be taken into account. It explained that it was aware that the majority of the requests had also been made to every other similar institution as well. Indeed the complainant has said in his request for internal review that 145 other institutions have not taken the same approach as it did. It was also clear that the complainant disagreed entirely with the university aggregating any of his requests and would not therefore have been responsive to narrowing his request down.
62. The Commissioner considers that the arguments are finely balanced in this case when it comes to deciding whether advice and assistance would be reasonable. He notes that the requests together do exceed the costs limit. However, the requests apart do not. He also notes that the complainant has the chance to make a new request for information founded on the understanding of the details of this notice.
63. The Commissioner has considered the facts carefully and has decided that the public authority was wrong not to offer further advice and assistance in this case. Whilst mindful of the arguments presented, it appears to be self evident that it would have been a straightforward process to have enquired if the complainant would have been in a position to choose from the four requests under consideration. He notes that the refusal notice dated 29 April 2010 offered no advice and assistance at all.

64. The calculations presented above show that it would have been an easy matter to contact the complainant and ask which requests were of priority. Whilst subsequent events and exchanges may demonstrate that the complainant was unwilling to refine the scope and accept anything less than the entirety of what was asked for, it does appear to the Commissioner that the choice should have been offered at the time of the refusal. As such, whilst the breach of section 16(1) is identified, no remedial steps are required as the contents of this Notice provide more than enough detail to the complainant to refine the request if he were so minded. The Commissioner has also noted that the complainant has attempted to resubmit the requests and he can now do so with the outcome of this case in mind.

## The Decision

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65. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- *It applied the costs exclusion [section 12(1)] correctly to the four requests the Commissioner has considered in this case (along with two other ones that it was entitled to aggregate them with).*
66. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *It failed to comply with its obligations to provide reasonable advice and assistance and breached section 16(1).*

## Steps Required

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67. The Commissioner requires no steps to be taken. He has explained why he does not require remedial steps in respect to the section 16(1) breach for the reasons specified in paragraph 64 above.

## Right of Appeal

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68. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 19<sup>th</sup> day of January 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## **Appendix A – the requests that have been considered in this case**

### *Request 1*

The complainant requested the following information on 26 April 2010:

*'FOI request – Terrorism Legislation*

*I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by email.*

*Q1 Does your institution provide any information or advice to students or staff on any potential liability under Terrorism legislation which might result from accessing materials for teaching or research? If so please provide copies of any documents held which detail or refer to such information or advice.*

*Q2 Does your institution have any kind of procedure to review or assess reading lists, module descriptors or other teaching materials which explicitly or in practice considers questions of safety and risk under terrorism legislation as part of its remit ? For example does the institution have anything similar or analogous to the 'module review process' established at Nottingham University described here :*

*<http://www.timeshighereducation.co.uk/story.asp?storycode=407122>;*

*<http://www.teachingterrorism.net/2009/08/03/nottingham-censorship-a-defence>;*

*<http://www.teachingterrorism.net/2009/08/06/is-vetting-at-nottingham-in-defence-of-academic-freedom>*

*If so please supply full details of this policy and procedure and advise when and how it was decided upon and implemented.*

*Q3 Does your institution have any system, policy or procedure in place for dealing with any potential actions taken by the authorities against the institution, its students or staff under Terrorism legislation ? If so please supply a copy of the policy and advise the date it was decided upon and implemented.*

*Q4 Does your institution have any system, policy or procedure in place for 'preventing violent extremism' as recommended for example in the government guidance document 'Promoting Good Campus Relations'.*

<http://webarchive.nationalarchives.gov.uk/tna/+http://www.diu.gov.uk/publications/extremismhe.pdf>

*Please indicate what procedures or policy exist and advise when it was decided upon and implemented, and provide copies of any documents held which detail or refer to such policy or procedures.'*

## *Request 2*

The complainant also requested the following information on 26 April 2010:

*'FOI Request – Internet and E-mail Access*

*I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.*

### ***INTERNET ACCESS***

*Q1 Does your institution use a filtering system to block access to specific material on the web ?*

*Q2 If yes at Q1 What categories of material are blocked for staff?*

*Q3 If yes at Q1 What categories of material are blocked for students ?*

*Q4 Does your institution use a filtering system to monitor access to specific material on the web ?*

*Q5 If yes at Q4 What categories of material are flagged up for staff ?*

*Q6 If yes at Q4 What categories of material are flagged up for students ?*

*Q7 Is the filtering system used a commercial software package ?*

*Q8 If yes at Q7 Which software package ?*

### ***INCOMING E-MAIL TRAFFIC***

*Q9 Does your institution block specific incoming e-mail traffic ?*

*Q10 If yes at Q9 What content or sources are blocked for staff ?*

*Q11 If yes at Q9 What content or sources are blocked for students ?*

*Q12 Does your institution monitor specific incoming e-mail traffic ?*

*Q13 If yes at Q12 What content or sources are flagged up for staff ?*

*Q14 If yes at Q12 What content or sources are flagged up for students ?*

***OUTGOING E-MAIL TRAFFIC***

*Q15 Does your institution block specific outgoing e-mail traffic ?*

*Q16 If yes at Q15 What content or destinations are blocked for staff ?*

*Q17 If yes at Q15 What content or destinations are blocked for students ?*

*Q18 Does your institution monitor certain outgoing e-mail traffic?*

*Q19 If yes at Q18 What content or destinations are flagged up for staff ?*

*Q20 If yes at Q18 What content or destinations are flagged up for students ?*

*Q21 Is the filtering system used a commercial software package?*

*Q22 If yes at Q21 Which software package ?*

*Q23 Please supply copies of any internal documents which discuss or detail the purpose and methods of any of the procedures in Q1 to Q22.*

***Request 3***

The complainant also made the following request on 28 April 2010:

*'FOI Request – Public Criticism, Whistle Blowing and Disrepute*

*I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.*

***PUBLIC CRITICISM***

*Q1 Does your institution have any employment contract terms or other staff regulations restricting public criticism of the institution ?*

*Q2 If yes at Q1 Can you supply a copy of the wording of these regulations.*

*Q3 If yes at Q1 In the period 01/01/07 to 31/12/09 how many staff were investigated under this category ? What were the outcomes of these investigations ?*

***WHISTLE BLOWING***

*Q4 Does your institution have any employment contract terms or other staff regulations concerning whistle blowing about improper conduct within your institution ?*

*Q5 If yes at Q4 Can you supply a copy of the wording of these regulations.*

*Q6 If yes at Q5 In the period 01/01/07 to 31/12/09 how many staff invoked a justification of whistle blowing ?*

***DISREPUTE***

*Q7 Does your institution have any employment contract terms or other staff regulations concerning bringing the institution into disrepute or any similar issues of damage to reputation ?*

*Q8 If yes at Q7 Can you supply a copy of the wording of these regulations.*

*Q9 If yes at Q7 Can you supply a list of activities that would be likely to breach these regulations.*

*Q10 If yes at Q7 In the period 01/01/07 to 31/12/09 how many staff were investigated under this category ? What were the outcomes of these investigations ?*

*Q11 Please supply copies of any internal documents which discuss or detail the purpose and operation of any of the regulations in Q1, Q4 and Q7.*

*Q12 Please supply copies of any internal documents which discuss or detail potential conflicts between the regulations in Q1, Q4 and Q7.'*

#### *Request 4*

The complainant also made the following request on 28 April 2010:

*'FOI Request – Research Grants*

*'I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.*

*I understand that research grants carry obligations to publicise that research work outside the academic world. Under previous FOI requests to each of the UK research councils they have explained to me the precise details of their own specific obligations. I believe that these can be broadly summarised as responsibilities to communicate the research to the public at both local and national level, and to raise awareness of the role of research in any related issues of public interest.*

*Q1 During the period 01/01/07 to 31/12/09 has your institution received any research grants ?*

*Q2 If yes to Q1 Can I ask if your institution operates any monitoring system to check whether these obligations to communicate the research to the public have been discharged ?*

*Q3 If yes to Q2 In what proportion of cases were the obligations to publicise the work carried out ?*

*Q4 If yes to Q2 In order of popularity what were the most common methods used to publicise the work ?'*

## **Appendix B – the requests that preceded the requests the work for which the Commissioner has considered in this case**

### *Request 5*

The complainant requested the following information on 12 February 2010:

#### ***'NON DISCLOSURE AGREEMENTS***

*Under the provisions of the Freedom of Information Act I would like to ask the following questions of your university and would prefer a response by e-mail.*

*1) Over the last 3 years how many current or former university staff have submitted claims to the employment tribunal service ?*

*I am happy to accept whichever definition of year is most convenient to you i.e. academic year, financial year or calendar year so long as it is consistent.*

*2) How many of these were settled prior to a full hearing date ?*

*3) How many of these settlements involved the insertion of a non disclosure (commonly know as gagging) clause in the terms of the settlement ?*

*4) What is the total figure that has been paid out in these settlements?*

*5) What has the total expenditure on legal expenses been in relation to the above disputes?*

*6) 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 ?*

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

*I would advise that I have previously submitted a similar request to two other universities. One responded in full without delay. The other exhausted the maximum extended time periods of each stage of the complaints process. Thereafter the Information Commissioner intervened and requested that they provide the information in full without further delay. Details of this precedent can be provided on request.'*

*Request 6*

The complainant has also requested the following information on 26 April 2010:

*'FOI Request - Staff E-mail Addresses*

*I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.*

*A list of the workplace e-mail addresses for all staff.*

*By workplace I am referring to corporate e-mail addresses ending in .ac.uk.*

*By staff I am referring to all individuals employed by your institution.*

*Please note that I do not require any segmentation of the list or any associated details.'*

*Request 7*

And the following information on 26 April 2010:

*'FOI Request – Suspended Staff*

*I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.*

*Q1 During the period 01/01/07 to 31/12/09 how many staff at your institution were suspended? Please break down the figure into those on full pay, reduced pay and no pay.*

*Q2 At the present time how many staff at your institution are currently suspended? Please break down the figure into those on full pay, reduced pay and no pay.*

*By suspended I am referring to any situation where a member of staff is under a contract of employment but involuntarily carrying out reduced or no duties for your institution.*

*Thank you very much for your assistance.'*

*Request 8*

Finally, the complainant also requested the following information on 26 April 2010:

*FOI Request – Workplace Bullying & Harassment*

*I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.*

*My questions relate to the 3 year period from 1 January 2007 to 31 December 2009.*

*By senior executive team I am referring to the 10 or so most senior staff within your institution.*

*Q1 How many staff have asked for support or advice due to bullying or harassment at work?*

*Q2 How many investigations have been made over allegations of bullying or harassment at work?*

*Q3 In how many of the cases in Q2 was the perpetrator on a similar employment grade to the victim?*

*Q4 In how many of the cases in Q2 was the perpetrator on a higher employment grade than the victim but not a member of the senior executive team?*

*Q5 In how many of the cases in Q2 was the perpetrator a member of the senior executive team?*

*Q6 How many investigations have found that bullying or harassment at work has taken place?*

*Q7 In how many of the cases in Q6 was the perpetrator on a similar employment grade to the victim?*

*Q8 In how many of the cases in Q6 was the perpetrator on a higher employment grade than the victim but not a member of the senior executive team?*

*Q9 In how many of the cases in Q6 was the perpetrator a member of the senior executive team?*



*Q10 What disciplinary or other follow up actions were taken as a result of those investigations?*

*Q11 How much was spent on legal fees in relation to the above cases?*

*Q12 How many staff have left the institution citing bullying or harassment as one of the reasons?*

*Q13 How many staff have attended workshops or awareness sessions on bullying and harassment?*

*Q14 Can you provide details of any other initiatives within your institution regarding bullying and harassment at work?*

## Legal Annex

### The Freedom of Information Act 2000

#### Section 1 - General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

#### Section 12 – Exemption where cost for compliance exceeds the appropriate limit

(1) 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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

## **Section 16 – Duty to provide advice and assistance**

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

### Statutory Instrument 2004 No. 3244

## **The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004**

...

### **The appropriate limit**

**3.** (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

### **Estimating the cost of complying with a request - general**

**4.** - (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-  
(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act<sup>[3]</sup>, and to which section 7(1) of that Act would, apart

from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

(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.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

### **Estimating the cost of complying with a request - aggregation of related requests**

**5.** - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>[4]</sup> in any part of the United Kingdom.

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