

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 June 2015

Public Authority: Edge Hill University
Address: Saint Helens Road
Ormskirk
Lancashire
L39 4QP

Decision (including any steps ordered)

1. The complainant has requested from Edge Hill University ("the University") a broad scope of information relating to the academic years 2000-2001 to 2012-2013.
2. The Commissioner's decision is that the University has correctly applied section 14 of FOIA to the request.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 23 October 2014 the complainant wrote to the University and made an information request. A full copy of the request has been provided separately to both parties but is not included in the body of this decision notice due to the length of the request and the personal data contained within it.
5. The University responded on 24 November 2014 and applied section 14(1) of FOIA to the request as it considered it to be vexatious.
6. Following an internal review the University wrote to the complainant on 8 January 2015. It maintained its application of section 14 of FOIA.

Scope of the case

7. The Commissioner received a complaint from the complainant on 9 February 2014.
8. The complainant disputed the University's application of section 14 of FOIA to his request.
9. The Commissioner has had to consider whether the University was correct to apply section 14 of FOIA to the request.

Reasons for decision

10. Section 14(1) of FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
11. Guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011)¹ places emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
12. The Upper Tribunal's judgment proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of requests; and (iv) any harassment or distress caused. The judgment concurred with an earlier First-tier Tribunal decision in *Lee v Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.
13. The judgment noted that the four broad issues are "*not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist*". It stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four broad issues, "*should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.*"

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

14. The Commissioner's guidance² on the application of section 14(1) indicates that the key question for a public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should take into account the background and history of the request where this is relevant.

The University's position

15. The University explained that the effort required to meet the request would be so grossly oppressive in terms of the strain on time and resources, that it could not reasonably be expected to comply with the request no matter how legitimate the subject matter or valid the intentions of the requester.
16. The University referred to the case of Independent Police Complaints Commissioner v The Information Commissioner³, in which the Tribunal observed that:

"A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester. If so, it is not prevented from being vexatious just because the authority could have relied instead on s.12".

17. The University explained that in this case, the request consists of 35 separately numbered requests for information. It further explained that embedded in the 35 requests are a total of 48 separate sub-requests, totalling 83 requests for information and datasets which span over a 12 year period. The University argued that this would result in the production of a minimum of 996 responses, many of which would require complex data sets to fully respond to the request.
18. The University reiterated its position set out at paragraph 15 and provided the Commissioner with an example to support such a view.
19. The University directed the Commissioner to request 1. The University considered that request 1 is broken down into 36 separate requests. It explained that part (h) sought the following information:

²<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

³ EA/2011/0222, 29 March 2012³

"All the names and schools of each teacher registered for PPD continuation fundable modules/programmes (level 6 and 7) together with the completion date for each registered student i.e completion meaning the student has submitted their assessment for the module and a decision has been made by an Assessment Board. The names of students should include all those that have been 'hidden' on the Student Information Database (SID) and classed as dormant."

20. The University considered that there was a lack of clarity with respect to the term 'hidden' and the information that has been requested, is for a total of 12 academic years, with each year potentially having several thousand student instance records. The University explained that in addition to the individual student records, assessment information held at academic board would have to be retrieved. Student information older than three years is stored offsite, securely by a third party and it is held by academic year and programme code. The University explained that professional development students undertake study by module and it would therefore be necessary to locate relevant programme module data within each educational course. The University estimated that the cost of locating, retrieving and extracting the information from offsite storage for request 1(h) for the 12 year time span requested would be around £1915. The University also confirmed that the estimate is a minimum cost as it is estimated that approximately 12 out of roughly 82 boxes per year would relate directly to the Faculty of Education relevant courses. The University then provided the Commissioner with a calculation of its estimated costs. This is as follows:

- Standard cost of locating and retrieving via storage services = £16.35 per box
- 12 boxes (approximate estimate) per year for 9 years data = £1765.80
- Staff time spent on communicating the information for the remaining 3 year period (6 hour @ £25 per hour) = £150
- Total fee = £1915.80

21. The University recognised that section 14(1) is concerned with the nature of the request rather than the consequence of releasing the requested information. It referred to the case of Information Commission v Devon County Council & Dransfield.⁴ In this case the Upper Tribunal took the view that the ordinary dictionary definition of

⁴ UKUT 440 (AAC), 28 January 2013

the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding the request.

22. Referring to the relationship between the University and the complainant, the University argued that the complainant would be aware of the fact that some of the information requested is available externally by the Higher Education Funding Council for England, National College for Teaching & Leadership and other relevant statutory bodies. The University explained that by asking for information that the complainant knew was accessible externally could be seen to be an improper use of formal procedure.
23. The University concluded by stating that responding to the request would have a detrimental effect on the University and the requester is abusing his right of access to information.

Complainant's arguments

24. The complainant has argued that the University has failed to explain why it considers the request to be vexatious. He assumed that the internal review would have articulated why it had refused every requested document on vexatious grounds.
25. The complainant considers that his request is "*precious, detailed and compromises more than one item.*" He therefore expected the University to consider each piece of information requested and decide whether to provide it or not. Consequently, he had imagined that some of the information requested would have been provided rather than a refusal of the whole request.
26. The complainant further argued that he is aware of significant financial irregularities and practices at the University which have been ongoing for over ten years and involve significant sums of public money. He believes that the irregularities and practices need to be exposed on the grounds of openness and in the interest of the public.

The Commissioner's view

27. In coming to a decision the Commissioner has considered the University's arguments set out at paragraphs 17 and 20. The Commissioner accepts the University's argument that complying with the request would generate 996 separate responses. The Commissioner has also considered both the case of Independent Police Complaints

Commissioner v The Information Commissioner⁵ and the more recent Court of Appeal decision in Dransfield v IC & Devon County Council / Craven v IC & DECC⁶ In the Court of Appeal decision it was held that the costs of complying with “an extremely burdensome request” could be the basis for concluding that a request was manifestly unreasonable under the EIR; it also concluded that this was the case under FOIA with regard to section 14. The Commissioner has determined that in this instance, the burden to comply with the request is grossly oppressive in terms of time and resources.

28. On this basis the Commissioner has determined that the University was correct to apply section 14(1) to the request.

Other matters

29. Although this does not form part of this decision notice the Commissioner would note the following from the Court of Appeal decision referred to in paragraph 27 above:-

“I would agree with the UT’s observation that, if the authority can easily show that the limits in section 12 would be exceeded, it would be less complicated for it to rely solely on that section, rather than section 14.”
(paragraph 86)

⁵ EA/2011/0222, 29 March 2012⁵

⁶ [2015] EWCA Civ 454

Right of appeal

29. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Gerrard Tracey
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