

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2015

Public Authority: University of Surrey
Address: University of Surrey
Guildford
GU2 7XH

Decision

1. The complainant requested copies of emailed correspondence including deleted emails relating to speeches given at local council meetings and to letters to the press. The university refused the request under s14 FOIA as it was considered vexatious.
2. The Commissioner's decision is that s14 FOIA was applied correctly. The university is therefore not obliged to comply with the request.

Request and response

3. On 23 October 2014 the complainant requested the following information:

"(i) All email correspondence (including attachments) relating to speeches given at Guildford Borough Council meetings over the past 18 months between the following: Malcolm Parry, Greg Melly, Linda Fox, Paul Stephenson (Director of Human Resources), Mustapha Smith, Carol Squires (Surrey Chamber of Commerce) Steve Molnar (Terence O'Rourke) and Tim Hancock (Terence O'Rourke). Please could you send me all iterations of speeches.

(ii) All emails (including attachments) between Stephen Mansbridge (Leader of GBC) or any other Guildford Borough Councillors and Greg Melly/Malcolm Parry/Linda Fox relating to speeches to be given at GBC meetings.

(iii) All email correspondence (including attachments) between Greg

Melly/Malcolm Parry and Maz Hussein (President of the Student Union) and Alistair Smithers, Alderman Gordon Bridger, relating to letters for publication in the local press.

(iv) Finally, please could you confirm that the University's IT team is able to access deleted correspondence. If so, please could you include deleted correspondence in this request."

4. On 11 November the university informed the complainant that the exemption at s14 FOIA applied to the request on grounds that it was vexatious.
5. The complainant appealed on 26 November. On 18 December 2014 the complainant was informed by the university that its internal review upheld the s14 exemption.

Scope of the case

6. The complainant contacted the Commissioner on 10 March 2015 to complain about the way her request for information had been handled.
7. This decision notice addresses whether the exemption at s14 FOIA has been applied appropriately to the request.

Reasons for decision

8. Section 14 FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
9. The Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011) placed emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
10. The 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 vs 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.
11. The judgment noted that the four broad issues are "not intended to be exhaustive, nor are they meant to create an alternative formulaic check-

list". 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."

12. The Commissioner's guidance on the application of s14(1) indicates that a 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.
13. The university informed the Commissioner that in refusing the request as vexatious it had taken into account the fact that the complainant is part of a campaign by two local groups acting against housing development on Guildford's greenbelt. The university is a target of that campaign because it has applied for planning permission to build staff houses on land that it owns in the green belt.
14. Prior to the request the university had received 13 other requests from the campaign. Several of these were multi-part requests and the university said it had made every reasonable effort to respond to them at considerable cost. It considered that the ongoing series of requests had become unreasonable and that the level of disruption and irritation caused could no longer be justified by the value of the information requested.
15. The Commissioner has been provided with copies of all the campaign's requests and he has ascertained that owing to the multi part nature of some of them they amount to 57 in all. The requests cover largely similar ground. The university submitted that the cumulative effect of the requests has amounted to an unreasonable persistence and that they have resulted in a disproportionate burden on the university.
16. The university believes that the campaign is using the FOIA as a device to cause disruption to its operations and to frustrate its legitimate right to contribute proposals to the local authority as part of the consultation on the Local Plan.
17. The university said it had determined the complainant's request to be vexatious after establishing that she was directly linked to the campaign. The complainant had attended meetings at the university and other meetings as a representative of the campaign and was standing as the campaign's candidate in the forthcoming council elections.
18. The university informed the Commissioner that the complainant together with other campaign members had gained unauthorised entry into

university buildings and had surreptitiously joined internal staff meetings and briefings to acquire information and disrupt proceedings. It said the campaigners had electronically recorded some meetings without the knowledge or consent of other attendees.

19. The university provided the Commissioner with examples of reports by campaign members in the local media which the university says have grossly misrepresented its position. The university also supplied examples of personal attacks on named university employees in articles and letters submitted by campaign members to the local press.
20. Some of the campaign requests have included a requirement to extract information held under what the university describes as unreasonably broad parameters. This has included requests for information relating to planning permissions secured more than 10 years ago and information deleted as part of the university's standard record retention processes. The current request from the complainant also seeks email correspondence that has been deleted. The university has described the frequency and subject overlap of the campaign's requests as amounting to a fishing expedition in search of a conspiracy where none exists.
21. The university acknowledges that there is a considerable public interest in the development of the Local Plan. However, it considers that the campaign requests typically seek information that goes beyond what is necessary to establish the university's position on this matter. The university considers that any material it discloses in relation to this issue can only be significant in enlightening its own position and that this is already a matter of public record. It considers that frequent and extensive trawls of internal correspondence involving various university departments will not add to public understanding of the university's position but will, if allowed to continue, seriously disrupt its legitimate operations.
22. The Commissioner has reviewed a detailed chronology of the campaign's requests to the university. He recognises the multi-faceted nature of many of these and considers that their requirements would cause a significant and disproportionate burden on university staff.
23. The Commissioner recognises that the complainant's request is part of a local campaign against building on the green belt. It is not for him to comment or adjudicate on the appropriateness of the university's stated intention to build on that green belt. However, he is required to consider whether there has been an improper use of the FOIA which would warrant a determination of a request as vexatious. In his view, several requests by the campaign, including that of the complainant's, for extensive trawls of the university's internal correspondence appear to constitute a fishing exercise for which the legislation was not designed.

He is satisfied that the campaign's requests are also exerting a disproportionate and unreasonably onerous burden on the university when considered in the context of how much the information derived would actually add to the public's understanding of the university's position.

24. In light of his investigation the Commissioner has consequently concluded that the complainant's request is vexatious. The university is not therefore obliged to comply with the request.

Right of appeal

25. 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

26. 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.
27. 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
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