

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2019

Public Authority: The University Council

Address: The University of Manchester
Oxford Road
Manchester
M13 9PL

Decision (including any steps ordered)

1. In a multi-part request the complainant has requested information about disciplinary processes and procedures from the University of Manchester ('the University'). The University initially complied with some parts of the request, relied on section 40(2)(personal data) and section 42(legal professional privilege) to withhold some of the requested information and relied on section 12(1) to refuse to comply with parts of the request. During the Commissioner's investigation the University reconsidered its position. It now considers that it should have relied on section 12(1) of the FOIA (cost exceeds the appropriate limit) and refused to comply with any part of the request.
2. The Commissioner's decision is as follows:
 - Under section 12(1) of the FOIA the University is not obliged to comply with the complainant's request in its entirety.
 - At the time of the request, the University did not comply with its duty under section 16(1) to provide advice and assistance.
 - The University breached section 17(5) as it did not give the complainant an adequate refusal notice within 20 working days.
3. The complainant re-submitted a refined request with regard to some parts of the request and the University subsequently complied with the remaining parts. As such, the Commissioner does not require the

University to take any remedial steps with regard to its breach of section 16(1).

Request and response

4. On 1 December 2017, the complainant wrote to the University and requested information in the following terms:
 1. *Are the relevant procedures comprehensively set out in the University's Regulation XVII and Academic Malpractice: Procedure for the Handling of Cases ['AMP']*
 2. *If the answer to (1) is 'no', please supply copies of any other documents pertaining to the relevant part of the University's disciplinary procedures and state where they are posted for students' attention.*
 3. *In relation to the above documents in (1) and (2) above, please identify (i) the date when each was introduced; (ii) the person(s) or body who drafted them; (iii) the person(s) or body who gave final approval to the drafts; (iv) the person(s) who have been responsible for their implementation and operation during their currency (identifying, if there have been changes in personnel since the procedures were introduced, the dates when such changes occurred).*
 4. *Have records been kept by Administrative Officers in compliance with paragraph 35 AMP?*
 5. *Please supply copies of all such records that have been kept in the last four years.*
 6. *If such records do not cover every disciplinary hearing within the ambit of these requests over the past four years (i) state the reasons why they do not and (ii) identify cases where they were not kept.*
 7. *Have records been kept by Administrative Officers in compliance with paragraph 37 AMP?*
 8. *Please supply copies of all such records that have been kept in the last four years.*
 9. *If such records do not cover every disciplinary hearing within the ambit of these requests over the past four years (i) state the*

- reasons why they do not and (ii) identify any cases where they were not kept.*
10. *Have records been kept by Administrative Officers in compliance with paragraph 42 AMP?*
 11. *Please supply copies of all such records that have been kept over the past four years.*
 12. *If such records do not cover every disciplinary hearing within the ambit of these requests over the past four years (i) state the reason why they do not and (ii) identify any where they were not kept.*
 13. *Has the University made requests for reports to Administrative Officers pursuant to paragraph 42 AMP?*
 14. *Please supply copies of all such requests that have been made in the last four years and the reports that have been submitted in response.*
 15. *Have regular annual reports to Senate been made by the Teaching & Learning Support Office in compliance with paragraph 42 AMP?*
 16. *Please supply copies of such reports as have been made over the past four years.*
 17. *Has the University supplied training in the procedures for staff?*
 18. *In relation to such training please identify (i) the person(s) responsible for the overall supervision of such training; (ii) the person(s) responsible for carrying it out; (iii) the number and duration of such training events that have taken place over the last four years; (4) the average number of staff attending each such event.*
 19. *Please supply copies of training materials utilised in such training programmes.*
 20. *If any such training programmes have been running online in the last four years please supply corresponding information and documentation as requested in (17) – (19) above.*
 21. *Please supply copies of any feedback forms received from staff in response to such training programmes.*

22. *Please state in relation to each of the following members of staff (i) the number of hours training in the procedures they have received over the past four years or since the date (if later) when each became eligible to take part in any aspect of the procedures and (ii) the date(s) they received them: [staff names redacted].*
23. *Please supply copies of all templates or similar recording documentation to ensure uniformity of practice and compliance issued to staff involved at any stage in the disciplinary procedures over the past four years*
5. The University responded on 6 March 2018. It complied with some parts of the request, refused other parts under section 40(2) and section 42 and relied on section 12(1) to refuse to comply with parts 18(ii), (iii) and (iv). With regard to part 18(i), the University said that the person responsible for training would be "the owner" ie it did not identify a specific individual or individuals.
6. The complainant requested an internal review on 9 April 2018. In this correspondence he refined parts 18(ii) and (iii) to cover only the period 2016/2017. He also queried why the University had not provided him with advice and assistance under section 16(1).
7. Following an internal review the University wrote to the complainant on 23 May 2018. It addressed the points the complainant had raised in his request for an internal review; released some information and directed the complainant to where other information is published.
8. With regard to part 18(i) the University confirmed that "the owner" was the Director of Campus Life. The University maintained its reliance on section 12(1) with regard to parts 18(ii), (iii) and (iv) and said that complying with these parts would be a "very significant task" – for a four year period or a one year period. It advised the complainant that if he requested this information for a specific School within the University it might be able comply with such a request within the cost limit. Finally, the University maintained its reliance on section 40(2) and section 42 to withhold particular information.
9. As a result of the Commissioner's investigation the University reconsidered its response to the complainant's request of 1 December 2017. It has confirmed that, irrespective of the responses that it gave to the request at the time and subsequently, which has included releasing some information voluntarily, it should have refused to comply with any of part of the request under section 12(1). On 22 March 2019 the Commissioner advised the University to communicate its new position to the complainant.

Scope of the case

10. The complainant initially contacted the Commissioner on 2 October 2018 to complain about the way his request for information had been handled.
11. In the course of the Commissioner's investigation the complainant refined parts 18(ii), 18(iii) and 18(iv) and submitted these to the University as a new request. This new request does not form part of the current investigation.
12. On 17 April 2019 the complainant provided the Commissioner with a submission. This focusses on a wider service complaint he has against the University, the University's general handling of his request and dissatisfaction with information that the University subsequently released.
13. The complainant has, however, also disputed the University's reliance on section 12(1) with regard to parts 18 of the request, and its compliance, or otherwise, with section 16(1). The Commissioner will address these particular concerns in this notice.
14. In light of its final position with regard to the complainant's request of 1 December 2017, the Commissioner's investigation has focussed on whether the University can rely on section 12(1) to refuse to comply with this request in its entirety. She has also considered whether the University complied with its duties under section 16(1) and section 17(5).

Reasons for decision

Section 12 – cost exceeds the appropriate limit

15. Section 12(1) says that a public authority is not obliged to comply with a request if the authority estimates it would exceed the appropriate cost limit to do so.
16. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the University. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

- determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
17. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
18. The University has told the Commissioner that when it initially contacted the data owners within the University, on receipt of the request, it was informed that, with regards to parts 18(i),(ii), (iii) and (iv) alone it would take over 18 hours to collate the requested information. For ease these parts of the request are as follows:
- In relation to such training please identify (i) the person(s) responsible for the overall supervision of such training; (ii) the person(s) responsible for carrying it out; (iii) the number and duration of such training events that have taken place over the last four years; (4) the average number of staff attending each such event.*
19. The University says that the original request was sent to its Department for the Student Experience (DSE) for that department to assist with collating the data. In relation to this point it was informed that all training is carried out by individual Schools within the University and that there is no individual requirement for the Schools to report this back centrally to DSE. Therefore in order to try and obtain a full response to the four parts of part 18 of the request, the University says it would have needed to contact each of the 17 Schools within the University, as well as those responsible for training staff who fall outside of these Schools, such as those within DSE and Professional Services (HR etc).
20. The University therefore estimated that to contact each School would have required the responsible person to contact the relevant areas of their department to determine who had carried out the training and to see if logs were made of when such training took place, or to check relevant calendars etc. According to the University this would have required ascertaining whether the approximately 12,000 members of University staff had completed such training over a four year period. It would then have had to try to work out when, and for how long, this training took place.

21. There was no requirement to log such training, and records would have varied between the Schools. The University says a highly conservative estimate would be each School having one person able to carry out the search for all staff members within their School and to log the dates and times, and this work taking that person take two hours to do. The University says that it would therefore take over 34 hours to complete this work for all of its Schools. If the University then included those within DSE and Professional Services, then this would be a further four hours. The University's position is that it would take a minimum of 38 hours just to try and answer all the parts of part 18.
22. In what it says is highly conservative estimate, the University has calculated that the remaining '29' parts of the request might have taken 15 minutes each to answer. This would add a further 7.25 hours to the total. Therefore the total time estimated would have been 45.25 to complete the task; again, well in excess of the 18 hour allowed under section 12(1).
23. The complainant submitted a request comprising 29 parts. The Commissioner considers that the University's explanation and estimates as to the length of time it would take to comply with the four parts of part 18 of the request alone to be credible, and indeed, on the conservative side. It would exceed the appropriate limit under section 12(1) to comply with all the parts of 18 alone; complying with the remaining 29 parts would only increase further the time it would take to comply with the entire request.
24. Irrespective of its subsequent voluntary responses to the complainant's request, the Commissioner has decided that the University was not and is not obliged to comply with the complainant's request of 1 December 2018 as to do so would exceed the appropriate cost limit under section 12(1) of the FOIA.

Section 16 – advice and assistance

25. Under section 16(1) of the FOIA, a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
26. In its initial response, the University had relied on section 12(1) to refuse to comply with parts 18(ii), 18(iii) and 18(iv). In its internal review, the University advised the complainant how he might refine these parts to bring complying with them within the cost limit.
27. The University has acknowledged that its handling of the request in its entirety, at the time and subsequently, has been somewhat muddled,

although the Commissioner recognises that the University has endeavoured to be helpful to the complainant.

28. With hindsight, and as it has noted in its submission to the Commissioner, in its internal review – if not its initial response – the University should have advised how **all** parts of the request could be refined, if it considered that simply refining three parts of it – 18(ii), 18(iii) and 18(iv) – would still take compliance with these and the remaining parts over the cost limit.
29. As it is, the complainant re-submitted the above three parts as a new request and, in the 18 months since the complainant submitted his original request, the University has gone on to address the remaining parts. This has included releasing training slides in response to part 19 of the request which it had previously withheld, as a gesture of goodwill. The University has told the Commissioner that at this point, because the complainant has subsequently received a response to all parts of his request it cannot offer any further advice and assistance.
30. The Commissioner notes that the University has reflected on its handling of the request in this case and has acknowledged that it might have been handled more efficiently. She also acknowledges that in the interim 18 months since the request was submitted, the University has gone on to comply with the remaining parts of the complainant's request. But the Commissioner has noted that, with regards to parts 18(ii), (iii) and (iv), the University had not offered any advice and assistance as to how these parts might be refined in its initial response. It did so in its internal review, albeit only with regards to these parts and only after the complaint's prompting.
31. On this occasion the Commissioner has decided that, on balance and at the time of the request, the University did not comply with its duty to provide advice and assistance under section 16(1). Although it was trying to be helpful by addressing all parts of the request at the point it received the request, ultimately the approach it took contributed to disadvantaging the complainant by delaying the point at which he received a clear and final response and could submit a complete, refined request or, if necessary, could seek a resolution through a complaint to the Commissioner.

Section 17 – refusal of request

32. Section 17(5) of the FOIA says that a public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact. The time for complying with

section 1(1) is 20 working days following the date of receipt of the request.

33. In this case, the complainant submitted his request on 1 December 2017 and did not get a response, which included a partial refusal under section 12(1), until 6 March 2018. The Commissioner therefore finds that the University breached section 17(5), which further contributed to the delay that disadvantaged the complainant.

Right of appeal

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

35. 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.
36. 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

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