

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2019

Public Authority: UCL Council

Address: Vice Provost Operations
University College London
1-19 Torrington Place
London
WC1E 7HB

Decision (including any steps ordered)

1. The complainant has requested information relating to a research paper he was involved in which was completed in 2012.
2. The Commissioner's decision is that University College London (UCL) has correctly applied section 14(1) of the FOIA to the request.
3. The Commissioner does not require UCL to take any steps as a result of this decision notice.

Background

4. The complainant was an employee of UCL until 2009/10. It was agreed that UCL would publish the paper that the complainant had been working on for a number of years previously with other employees of UCL. It was subsequently published in 2013.

Request and response

5. On 11 July 2018 the complainant made a request relating to this particular matter and UCL responded on 13 August 2018. Following

UCL's response the complainant wrote to UCL on 13 September 2018 in the following terms:

"Thank you for your response. Unfortunately, there are a couple of matters that I am not happy about, deleted [sic] below.

1) Regarding your point 1 below. I was told that [redacted] had made a small correction to the magnitude errors (or words to that effect) to correct the discrepancy that was noted in the 2012 research paper on the OM Catalogue paper. If he has done what he has said, then he must have details of the correction he has made and the testing that he has done that shows that the discrepancy has been corrected. It can therefore be assumed that when he made the correction he would have re-computed the diagram presented in the 2012 paper to show that the correction removed the discrepancy. If he didn't recompute the diagram, then he must have used another method. If he hasn't done either, then he cannot know if the magnitude errors are corrected, or at least improved compared to the original. IT IS THEREFORE CLEAR THAT INFORMATION IS BEING WITHHELD AND I WOULD BE GRATEFUL IF YOU CAN LOOK AT THIS MATTER AGAIN. INFORMATION MUST EXIST OR NO CORRECTION WAS EVER DONE.

2) Regarding point 2. [redacted] wrote the computer program Ommodmap_mod.f90, and he also wrote the section on the Mod-8 correction in the 2012 research paper on the OM catalogue. In the research paper he shows an image used in testing that seems to contain only one star. In view of the fact that the OM calibration was done on uncorrected images (since the computer program was available during the calibration) can he give details of the images that he tested his program on (either filters, backgrounds and star-densities). Clearly this is an important algorithm and determines the limiting accuracy of a lot of the photometry. PLEASE [sic] CAN YOU LOOK AT THIS AGAIN.

3) Regarding 3, just sticking to [redacted], can [redacted] explain what contribution he made to the subject of the 2012 research paper between 2004 and 2008, when the work was mainly done. [redacted] never attended any meetings to do with project, I never met him, and I am sure he knew nothing about the work until his name was put on the paper. Furthermore his name was never on the early version of the paper in 2008. Similar things go for the other people I mentioned. To most people this constitutes research misconduct and it will be brought to the attention of the STFC and Science Minister. Further examples of research misconduct include failing to consult properly, forcing people to allow the paper to be submitted for publication and failing to fix known bugs in computer programs before submission. PLEASE CAN YOU LOOK AT THIS AGAIN."

6. On 14 September 2018 UCL wrote to the complainant stating:
"I note that you ask for UCL to look at these matters again and reconsider its response. Would you like me to treat this as a completely new request or conduct an internal review of how your previous request was dealt with?"
7. The complainant responded the same day and stated:
"Perhaps it will be easier to treat it as a new request. Some of the information I asked for must exist, for the reasons I have given."
8. On 18 October 2018 UCL provided its response refusing to provide the information and cited section 14(1) of the FOIA. Following an internal review UCL wrote to the complainant on 19 November 2018 and stated that it was upholding its position.

Scope of the case.

9. The complainant contacted the Commissioner on 2 December 2018 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if UCL has correctly applied section 14(1) to the request.

Reasons for decision

11. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). The Tribunal commented that vexatious could be defined as *the "manifestly unjustified, inappropriate or improper use of a formal procedure"*. The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester;

(3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

14. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the: *"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).
15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests¹. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
16. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
17. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
18. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

UCL's position

19. In its submission to the Commissioner, UCL provided some context and background to the case that it considers is relevant. It stated:

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>

"The context is significant here because UCL takes the view that the complainant's request is part of a pattern of requesting similar information over the course of many years". It provided a list of requests since 2009, but highlighted that it has been receiving requests under FOIA and the Data Protection Act since 2009. Furthermore the FOIA requests have increased with six FOI requests received throughout the course of 2018.

UCL has also received, and at times responded to, requests from the complainant outside of the FOIA regime.

20. UCL provided some background to the case and advised that the complainant had been an employee at UCL until 2009/10. The paper in question was published in 2013, but remains a source of contention with the complainant.
21. Since 2011 the complainant has sent a series of emails to UCL with various allegations of research misconduct, but for reasons that are unclear he has not lodged a formal complaint of research misconduct as per UCL procedures despite being offered the opportunity to do so. However throughout his correspondence since 2011 with UCL, including his FOI requests, he continues to allege research misconduct.
22. UCL considered that the request meets the following indicators as outlined in the Commissioner's guidance:
 - a. *Frequent or overlapping requests. The latest request of 13 September 2018 was part of a long line of overlapping requests from the complainant stretching back several years on the same or similar topics.*
 - b. *Unreasonable persistence. The complainant is attempting to reopen an issue which has already been comprehensively addressed by UCL before.*
 - c. *Futile requests. The issue at hand individually affects the requester and there is little public interest.*
 - d. *Personal grudges. For whatever reason, the complainant appears to be targeting a particular employee or office holder against whom they have some personal grudge.*
 - e. *Unfounded accusations. The complainant's correspondence makes unsubstantiated accusations against specific UCL employees.*

Purpose and value of the request

23. UCL explained that it has not asked the complainant as to the purpose behind his request, as to do so would go against the broadly 'applicant-blind' drive behind FOI.
24. It has tried to assess purpose and value based on the evidence available to it, the complainant's own correspondence and its own analysis.
25. UCL considers there seems little obvious value or purpose to the request. It explained:
 - The purpose behind the requests do not appear to be for the benefit of wider research into astrophysics. Having checked on the NASA Astrophysics Data System, which is the source for information on research papers in this area of work, other than the 2013 paper co-authored with employees from UCL that is the subject matter of the FOI requests, the complainant has not published any such papers since he left UCL in 2010. If the FOI request were for research purposes there may be an argument that there was a wider public interest purpose to answering these requests, but there is no prima facie evidence of this.
 - Although the current FOI request alleges research misconduct against UCL employees (as have his previous FOI requests), the complainant declines the opportunity to lodge a formal complaint as per UCL procedures; this would be the proper route to address such concerns and he has been informed of these. So it is not clear that this motivates this most recent FOI requests or the ones preceding it.
 - Persistently alleging research misconduct through FOI requests seems an unjustified and improper use of FOI.
 - It is hard to see any objective value or public interest in providing this information. On the contrary, it seems that the complainant is pursuing a trivial or highly personalised matter of little (if any) benefit to the wider public.
26. Further evidence as to the lack of value is that the nature of his request follows a pattern of arguing points rather than asking for new information. For example, in limb 1 of his request he had already been informed on 13 August 2018 that UCL did not hold the information he was requesting and yet he continues to press for the same or similar information which is clearly not held.
27. Similarly, the request appears part of a pattern whereby the complainant challenges UCL for some alleged wrongdoing without any cogent basis for doing so. See in particular limb 3 of the request when he writes: *'Further examples of research misconduct include failing to consult properly, forcing people to allow the paper to be submitted for*

publication and failing to fix known bugs in computer programs before submission. PLEASE CAN YOU LOOK AT THIS AGAIN.'

Impact on authority and details of the detrimental impact of complying with the request

28. The focus of these requests centres on a paper the complainant co-authored with members of UCL staff in 2013. Given this focus of the request and those previously, [redacted] bears the burden of providing information in response to the requests and so UCL have sought his views.
29. Over the years [redacted] has addressed the complainant's concerns in the spirit of transparency, but he feels irritated and upset by the endless succession of FOI requests. For [redacted] these requests are distressing because of the following:
 - Personal grudges. For whatever reason, the complainant appears to be targeting particular individuals – most recently [redacted], but previously the former Head of Department, [redacted] and a former UCL employee, [redacted] - against whom he seems to have some personal grudges and held them for some time.
 - Unfounded accusations. The request makes unsubstantiated accusations against [redacted], see limb 3 of the request: *'To most people this constitutes research misconduct... Further examples of research misconduct include failing to consult properly, forcing people to allow the paper to be submitted for publication and failing to fix known bugs in computer programs before submission'*.
 - Defamatory comments and threats to defame. See limb 3 of the request *'and it will be brought to the attention of the STFC and Science Minister'*. Further emails in 2018 threaten to take up complaints with the Vice-Chancellor (Provost) of UCL. These threats to defame [redacted] have a distressing impact on him and serve only to undermine his reputation and jeopardise his research and career, and the wider reputation of UCL.
30. The complainant's unreasonable persistence is also a contributory detrimental effect on UCL. In limb 1 of his request he is asking for information that he has already been told does not exist. Similarly, in limb 3 the allegations of misconduct that he raises that can be investigated by UCL should be raised through the proper route, not FOI. It seems the complainant is using FOI to allege misconduct without wanting to initiate proceedings: this adds stress on UCL staff.

31. There is detrimental impact on UCL in terms of the time it takes to respond to the requests and subsequent reviews. In particular, responding to his requests places pressure on employees and systems right across UCL: from [redacted] himself, who recently has borne the brunt of addressing the requests previously; to the front line FOI team who administer the FOI process; to the staff that support the internal review process; and finally to the Chief Operating Officer who oversees the internal review process. Administering the formal process of FOI takes resource.
32. The request, when taken in context with the complainant's pattern of requests over the years, is an inappropriate diversion of resources that could otherwise be put elsewhere, e.g. developing its publication scheme.
33. In 2018 alone, the complainant submitted six requests to UCL on this same or similar topic. UCL has calculated that in total it has taken 48 hours of staff time to process these requests, the figure is based on a total of the estimated time taken to process these requests.

Why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value;

34. UCL consider this request is unjustified and disproportionate because:
 - as set out above, there is little inherent value or demonstrable public interest behind the request, or previous requests he has submitted on this topic, which means it is difficult to find much justification for it;
 - while the complainant accuses UCL employees of research misconduct via his FOI requests, he does not lodge a formal complaint via the University's procedures, which would be the proper route to investigate such matters, and this contributes towards making his current request an unjustified and improper use of FOI;
 - when taken in context of the history and pattern of requests, the complainant's request places a significant and disproportionate burden on UCL, and in particular [redacted], because resource (time and effort) needs to be devoted to meet it;
 - having conducted a balancing exercise with the objective value of the request on one hand weighed against the (detrimental) effect fulfilling it has on UCL on the other, we have found that the overall impact is disproportionate and unjustified.

The complainant's position

35. In his correspondence to the Commissioner, the complainant explained he had asked for some information from [redacted] relating to a research paper that was completed in 2012, two years after he had finished working there. The research paper relies heavily on the work the complainant did there and whilst [redacted] became the first author of the paper, he in fact did not do much work for it.
36. However, one of the requests relates to last-minute work [redacted] did before submitting the paper for publication, in which no time was allowed to discuss what he had done. [Redacted] wrote a computer program to analyse the photometric errors. On a previous FOI request the complainant asked for a copy of this computer program and was initially refused it.
37. After intervention by the Commissioner the complainant was sent a copy of it. The computer program then revealed that [redacted] had not fixed a bug in it that he knew about, and also his algorithm wasn't very reliable or robust. The complainant was also told that [redacted] had made a small correction to the photometric errors.
38. The complainant further explained that in his last FOI request he asked for details of the actual correction and then what was done to show that the errors had been corrected (or better than what they were). He asked if [redacted] had run the computer program again on the corrected data.
39. The complainant considers that as [redacted] was the Principal Investigator of the project and has been at UCL since before 2000, he should have been able to explain clearly how the errors had been corrected and what further tests have been done to check them. The complainant stated his own analysis shows the errors are no better than what they were. The errors are important when comparing two or more observations of the same object.
40. The complainant could see no reason why [redacted] could not explain things carefully and show what has been done. It was unreasonable of him to submit the paper without correcting his bug and explaining to the other co-authors what he was doing, etc.

The Commissioner's decision

41. The Commissioner has considered the submissions made by both parties; the background to the case and the wider circumstances.

Frequent or overlapping requests

42. UCL provided the Commissioner with evidence of requests relating to similar issues dating back to 2012 and up to 2018. In 2018 UCL stated

that it has received six FOIA requests regarding the same issues. Whilst numerous replies have been issued by UCL on each occasion further correspondence is entered into by the complainant. The Commissioner considers this meets her criterion of frequent and/or overlapping requests.

Unreasonable Persistence

43. UCL also provided evidence that soon after the complainant receives a reply from UCL a further FOIA request is made or further correspondence is entered into often arguing points in detail. Furthermore numerous staff at UCL, unrelated to the FOIA area have been copied in on emails. The Commissioner considers that this action is unreasonable and evidence of persistent behaviour.

Personal grudges

44. It appears clear to the Commissioner from the correspondence provided that the complainant has a long-standing issue. The requests themselves appear to be made as part of an ongoing grievance against UCL. The complainant has been given the details of how to complain if he believes that there has been misconduct, however, to date, he has chosen not to do this. Should the complainant genuinely feel the research is flawed the appropriate complaint channel should have been followed.

Unfounded accusations

45. The Commissioner has seen evidence of the complainant using words such as "incompetent", "poor science", "lies" and "very poor programmer". These accusations have been made against a number of staff which is unacceptable. In addition numerous criticisms of other staff/UCL ie they do not have the correct skills/qualifications and "*it is hoped that the UCL never gets its hands on public money for such projects*".

Burden/impact on the public authority

46. The Commissioner notes that the correspondence to UCL raises numerous points and information, including background information that is not necessary. This overcomplicates the matter and consequently takes more time to identify the substance of the request. This could be construed as causing disruption and annoyance to UCL.
47. UCL have confirmed that in 2018 alone, in total 48 hours has been spent dealing with these requests. The Commissioner therefore considers that the cumulative effect of the requests and subsequent correspondence represents an excessive burden on UCL.

48. The matter being pursued by the complainant is relatively trivial and UCL would have to expend a disproportionate amount of resources in order to meet their request.

Conclusion

49. The Commissioner accepts that there is a value in public scrutiny of research projects and the results and outcomes of those projects. She further acknowledges that this is strengthened where public money is used to fund such research. It is feasible that initially there was a serious purpose behind the requests however, the value in continuing with them has diminished, not least by the time elapsed since the publication of the research paper.
50. Furthermore, it appears that, if the complainant was truly concerned with misconduct he would take his concerns forward by the alternative route he has previously been advised.
51. Having considered all the circumstances of the case, it is the Commissioner's view that the request is vexatious and that UCL is entitled to rely on section 14(1) of the FOIA.

Right of appeal

52. 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

53. 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.
54. 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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