

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2014

Public Authority: Imperial College London
Address: South Kensington Campus
Exhibition Road
London
SW7 2AZ

Decision (including any steps ordered)

1. The complainant has requested Imperial College London (the college) to disclose the course materials, tutorials and exams for a particular course taught by a named tutor in Autumn 2011. The college responded to this request refusing to disclose the requested information under section 43 of the FOIA.
2. During the Commissioner's investigation the college claimed a late reliance on section 14 of the FOIA. The Commissioner has considered section 14 of the FOIA in this case and he has concluded that it does apply to this request.
3. As he is satisfied that section 14 of the FOIA applies to this request, he requires no further action to be taken.

Request and response

4. On the 27 November 2012 the complainant wrote to the college and requested information in the following terms:

"I would like to request the course material, tutorials, and exams for the course taught by [name redacted] in Autumn 2011. I believe that the title of the course was: thin film growth, but it may be named differently."
5. The college responded on 21 December 2012 refusing to disclose the requested information under section 43 of the FOIA.

6. The complainant requested an internal review on 15 January 2013.
7. The college completed its internal review on 6 February 2013. It informed the complainant that it remained of the view that the requested information was exempt from disclosure under section 43 of the FOIA.

Scope of investigation

8. The complainant contacted the college on 6 September 2013 to complain about the way her request for information was handled. The complainant referred to previous case with the Commissioner that investigated two requests for very similar information held by a different tutor at the college – case reference FS50449944. She stated that the college first applied section 43 of the FOIA. But during the Commissioner's investigation the college claimed a late reliance on section 14. The complainant confirmed that case reference FS50449944 was, at this time, being considered by the Information Tribunal but no decision had been made.
9. The complainant noted that the college had applied section 43 of the FOIA to this request and as no adjudication had been made by the Commissioner on the application of this exemption, she asked him to consider this further information request and whether section 43 of the FOIA applied.
10. During the Commissioner's investigation the college claimed a late reliance on section 14 of the FOIA for this request. The Commissioner is allowed to exercise his discretion when deciding whether to allow a late claim of an exemption or not at such a late stage. It is noted that the Commissioner accepted a late claim on section 14 of the FOIA during his investigation under case reference FS50449944. Due to this requests close connection to this case, the Commissioner considers it would be appropriate to accept the late claim on this occasion as well.
11. As the Commissioner has accepted the college's late claim on section 14 of the FOIA, this notice will concentrate on this exemption and whether it applies to the complainant's request of 27 November 2012. The Commissioner will only go on to consider section 43 of the FOIA if he decides that section 14 does not apply in this case.

Background

12. Case reference FS50449944 considered certain elements of the complainant's information requests of 23 and 31 January 2012. These requests focussed on the course material of a named tutor within a particular department of the college. The Commissioner's decision to uphold the college's late reliance on section 14 of the FOIA was communicated to both the complainant and the college on 26 February 2013. The Commissioner decision notice can be found on his website via the following link:

http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50449944.ashx

13. The complainant worked for the college. During her employment she made allegations of misconduct within the department she worked. These were investigated but not upheld. As a result of these allegations the college investigated the complainant's professional conduct and these investigations resulted in her dismissal. The complainant referred the matter to an Employment Tribunal, which at the date of this notice was still ongoing. The complainant has made various information requests and subject access requests – all of which have been connected to or related to this appeal and (putting the request of this notice to one side) targeted one named tutor within the department she worked.

14. The request the subject of this notice does not relate to the same tutor – it relates to another tutor in the same department who the college believes the complainant considers operated similar inappropriate teaching practices to the tutor named in her earlier requests.

Reasons for decision

15. Section 14 of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.

16. As the Commissioner has already found the complainant's requests of 23 and 31 January 2012 to be vexatious, the relevant consideration here is whether the complainant's request of 27 November 2012 is sufficiently connected to her earlier requests and therefore the issues discussed in his decision notice of 26 February 2013 (FS50449944) to be deemed vexatious as well.

17. Before he comments on whether it is, the Commissioner notes that there is one clear difference between the complainant's requests of 23 and 31 January 2012 and the complainant's request of 27 November 2012. He notes that the information request of 27 November 2012 relates to a different tutor to the requests of 23 and 31 January 2012.

Part of the Commissioner's decision to deem the requests of 23 and 31 January 2012 as vexatious was based on the college's submissions that the complainant's requests and correspondence had caused the named tutor a considerable amount of distress and upset.

18. As the request being considered in this notice relates to another former colleague, the Commissioner must consider whether this clear difference between the requests is enough to reject the college's late application of section 14 of the FOIA to the complainant's request of 27 November 2012.
19. The Commissioner has discussed this request with the college in detail. The college is of the view that this request is part of the complainant's ongoing campaign against the college and the department she worked in and she requires this information (as she did with her earlier requests) to assist with her ongoing Employment Tribunal case.
20. It confirmed that the complainant's earlier requests related to the allegations she made against the named tutor in these requests whilst she worked at the college. At some point during the investigations that took place, the complainant commented to the college that she was aware of another tutor who was subject to the same allegations. Although this other tutor was not named at this time, the college believes the request of 27 November 2012 names the tutor she was referring to.
21. The allegations she made of wrongdoing in the department she used to work form part of her ongoing employment dispute with the college. The college remains clear that the complainant's information requests are for information she believes she requires to successfully argue this dispute.
22. During his investigation the Commissioner wrote to the complainant to outline his preliminary view that section 14 of the FOIA applied to this request as well. He advised the complainant of what the college had said and that there appeared to be sufficient evidence available to demonstrate that this request is connected to her earlier requests and ongoing employment dispute with the college.
23. The complainant responded advising the Commissioner that she felt this decision was incorrect and forwarded further evidence to him which she believes supports her view that there is and has been gross professional misconduct with the department concerned. However, the complainant did not at any time dispute the fact that this request is connected to her ongoing dispute with the college and her earlier requests.
24. The Commissioner is therefore satisfied in this case that there is sufficient evidence available to demonstrate without doubt that the

complainant's information request of 27 November 2012 is connected to her ongoing employment dispute with the college and is closely connected to her earlier requests, which were found to be vexatious in the decision notice that was issued in February 2013.

25. As stated previously, the only difference in this case is the fact that the complainant's information request of 27 November 2012 relates to another tutor in the same department. The Commissioner must now consider whether this clear difference between the complainant's information request of 27 November 2012 and her earlier requests is sufficient to reject the college's application of section 14 of the FOIA in this case.
26. The Commissioner's decision notice for case reference FS50449944 noted the distress and upset the complainant's earlier requests had caused the tutor named in them. In paragraph 32 of this notice the Commissioner acknowledged the severity of the distress and harassment the requests had caused this tutor.
27. Considering the fact that the request the subject of this notice is linked to the same underlying subject, the Commissioner considers it is fair to say that the other tutor would more than likely be affected in the same way. Whether it is the complainant's intentions or not, the effect of making this request would be to harass and distress yet another tutor within her former department. The college believes the tutor named in the complainant's request of 27 November 2012 is the tutor she referred to in previous discussions where she alleged that another colleague was carrying out inappropriate working practices. Such allegations have severely affected the tutor named in the complainant's earlier requests and it is fair to say that the majority of people would be distressed, upset and feel they were being targeted by such allegations.
28. In his earlier decision the Commissioner agreed that the complainant's requests and correspondence had placed a significant burden on the college in terms of time, resources and distraction from its public functions (see paragraph 26). Compliance with this request would only add to this burden. It is also clear that the complainant's request of 27 November 2012 is closely connected to her earlier requests, her ongoing employment dispute and the allegations she has made of wrongdoing within the department she worked. For these reasons, the Commissioner is satisfied that section 14 of the FOIA applies to the complainant's information request of 27 November 2012 as well.
29. The complainant has forwarded further information to the Commissioner, which she believes proves the extent of inappropriate working practices in the department she worked. The Commissioner has given this information consideration. Some of the information relates to

educational practices in America and has no bearing on the college. Other information has been submitted to demonstrate that identical exam questions have previously been used in a mock and then a real exam. The Commissioner has reviewed this information. He does not consider this information proves that inappropriate teaching practices have been adopted at the college, although he is not an expert in this field or indeed has the power to make such a judgement one way or another. He notes that the complainant's previous allegations of such practices have been investigated by the college more than once and these investigations, albeit not wholly independent of it, did not find any evidence of any such practices.

30. As the Commissioner is satisfied that section 14 of the FOIA applies in this case, he requires no further action to be taken.

Other matters

31. Although it cannot form part of this decision notice as it happened after the complainant's request was made to the college, it is worthy to note that the Information Tribunal has since ruled on the application of section 14 of the FOIA to the complainant's earlier requests of 23 and 31 January 2012. Its decision (EA/2013/0054) was issued on 10 October 2013 and can be found via the following link:

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i1097/042%2010102013%20Decision.pdf>

32. The tribunal agreed with the college and the Commissioner that section 14 of the FOIA applied. It again acknowledged the burden already placed on the college, the distress already caused to the named tutor and commented that the FOIA is not the correct route by which to obtain information relating to an employment tribunal case. It stated that it was for the employment tribunal itself to decide if such information was required in order for the hearing to proceed and if so to make the necessary direction. It felt the complainant's requests were an inappropriate use of the FOIA and therefore vexatious.

Right of appeal

33. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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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