

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2015

Public Authority: University of Sussex

Address: Sussex House
Falmer
Brighton
BN1 9RH

Decision (including any steps ordered)

1. The complainant has requested from the University of Sussex (the "University") details of the cost that it spent on pursuing a particular Information Rights Tribunal case and for a copy of the correspondence received from its contractor.
2. The University refused the information on the basis that the request is vexatious in accordance with section 14 of the FOIA.
3. The Commissioner's decision is that the request is vexatious and that the University has correctly applied section 14 of the FOIA to refuse the request. Therefore, the Commissioner does not require the University to take any steps.

Request and response

4. On 12 March 2015, the complainant wrote to the University and requested information in the following terms:

"Dear University of,

Please disclose the amount of money the University spent on pursuing Information Rights Tribunal case EA/2014/0148.

Please also disclose a copy of the letter the University received from Chartwells, referred to in paragraph 20 of ICO Decision Notice FS50519211."

5. The University responded on 13 April 2015. It refused the information as it considered the request to be vexatious.
6. Following an internal review the University wrote to the complainant on 12 May 2015. It maintained that it considered the request to be vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 2 June 2015 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case is to be to determine whether the request is vexatious and if the University is correct to rely on section 14 of the FOIA to refuse to comply with the request.

Reasons for decision

Section 14 – vexatious request

8. Section 14(1) of the FOIA states that a public authority may refuse a request if it is vexatious. The FOIA does not define the term, but it was discussed before the Upper Tribunal in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).
9. In this case the Upper Tribunal defined a vexatious request as one that is "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
10. In making his decision the Commissioner has obtained submissions from both the complainant and the University to understand the circumstances surrounding the request in order to reach a decision on whether the request is vexatious. The Commissioner will consider their arguments where appropriate.

Burden on the authority

11. The University stated that the complainant had placed a significant strain on its resources by submitting a long and frequent series of requests and the most recent request had contributed to the aggregated burden.

12. The University argued that since 2014 the complainant had made:
 - 23 FOIA requests with further follow up requests within those;
 - 10 request for internal reviews
 - 6 appeals to the ICO
13. The University said that these requests broadly focus on a single issue which is University management decisions, mainly in relation to the decision to outsource its catering services to a private services company.
14. The University explained that it had previously raised the issue of numerous requests with the complainant and it had directed him to the ICO's guidance following the receipt of 14 requests between January and July 2014. The ICO's guidance states that requesters should not "*disrupt a public authority by the sheer weight of requests*". The University said that the complainant responded to this by saying "*that the ICO's "dos and don'ts", although charming, do not have any statutory authority*". Since this statement, the University said that it continued to receive more requests and additional correspondence from the complainant.
15. The University stated that it notified the complainant of how problematic the level and frequency of his requests were and that it had continued to respond to each of his requests despite the financial cost. It added that when the matter had been dealt with by the Information Tribunal, it had released the University's contract with Chartwells in almost its entirety but excluded certain key financial information (redactions were upheld by the Information Tribunal).¹
16. The University considered this most recent request as another in an overlapping and frequent series of requests relating to the University's decision to outsource its catering services.
17. The University argued that as the issue with Chartwells had now been dealt with by the Tribunal, further disclosure of information relating to this issue is unjustified in terms of expense and distraction to University staff.

¹ EA/2014/0148

Cause disruption or annoyance

18. The University stated that the complainant had frequently used information obtained via the University's FOIA process to publish selective and misleading information about the University and its staff on the internet. It provided examples:
- The complainant had previously alleged incompetence and waste in the University's proceedings with the Tribunal in respect of the Chartwells contract.
 - The complainant had attacked the character of a named solicitor who had been acting for the University.
 - The complainant had photographed and published on social media folders containing documents which he had previously requested to be included in a Tribunal bundle. He claimed that the University was attempting to "*cause [the complainant] pain*" by "*dumping a massive bundle of documents*" on the complainant "*just before judges begin to consider*" the Tribunal appeal.
 - The complainant had built up a persistent campaign against the University governance. He made accusations in Tribunal hearings that the University management was "*brazenly deceptive*", acted "*wrongly and in bad faith*" and has displayed "*ineptitude and incompetence*".
 - The complainant had regularly mocked named senior University management on his blog and on social media and he often used information obtained from the University pursuant to the FOIA for this purpose.
19. The University considers that the complainant is seeking to use the requested information in a misleading manner to contribute to this ongoing campaign against the University, specifically in order to criticise University management.
20. The University argued that this request which is part of a series of frequent requests on the same topic (the Chartwells contract) is for the complainant to use the information to criticise University staff in relation to an issue which had already been dealt with by the Information Tribunal.

Harassing the public authority or its staff

21. The University argued that the complainant's tone was aggressive and mocking in his correspondence with University staff. The University

provided the Commissioner with copies of correspondence between the complainant and the University which highlights its view.

22. The University argued that in view of the range of requests and correspondence from the complainant, the tone of his correspondence constitutes an on-going campaign against the University. It added that the complainant had used argumentative language in his correspondence of which the University thought to be unacceptable for its staff to receive.
23. The University considers that if it continues to correspond with the complainant on this issue, the correspondence would persist.
24. The University said it does not suggest that the request may be characterised as obsessive. However, it does consider the request to be unreasonable in light of the number of requests on this issue and the fact that the matter has now been decided by the Tribunal.
25. The University argued that for the reasons set out in its submissions (paragraph 18 of this DN) it does not consider that this request has a serious purpose or value.

Complainant's position

26. In relation to the first part of the request (the legal expenditure on the Tribunal appeal) the complainant argued that there is a public interest in public authorities' expenditure on FOI-related legal advice being published. The complainant also argued that there is an interest in this particular legal expenditure being scrutinised because he is of the view, that there is clear basis for suspecting that it was extravagant and wasteful. He said that the public is entitled to assess, in light of the findings of the tribunal case, whether or not the University's appeal offered value for money.
27. In relation to the second part of the request (the University's letter from Chartwells) the complainant argued that there is a public interest in understanding the effect that the outsourcing of public services has on public sector transparency. He believes that although the Tribunal had looked into the issue, then this does not signify that there is no public interest in the public being able to understand the factors involved.
28. The complainant disagrees that his request is vexatious and he considers that this case would not cause disruption or distress. He argued that this is a simple and easy request that would involve a member of staff obtaining a copy of the letter and one item of

expenditure. The complainant also argued that there is significant value to his request and that its purpose is journalistic.

Commissioner's position

29. The University was asked to provide evidence that this request has resulted from unreasonable persistence on the complainant's part. The Commissioner acknowledges that the University has considered the complainant's request as part of the overall issue of the Chartwells outsourcing, rather than legal expenditure on the appeal itself.
30. The Commissioner has viewed the requests on this issue which the University provided during the investigation of this case. However, the University said that the correspondence relating to the Tribunal itself was not included due to its volume. The Commissioner notes that the requests in question start from 2013 and that the requests are relating to the Chartwells contract.
31. The University was asked to provide copies of a series of frequent or overlapping requests on the same issue. The Commissioner is satisfied that the requests supplied by the University are sufficient evidence to demonstrate this.
32. The Commissioner considers that these requests would have an unjustified effect on the University. He notes the context and history of the request which has been ongoing for some time. The Commissioner has also noted the tone of the complainant's correspondence with the University, which in his view goes beyond the level of criticism that the University or its employees should reasonably expect to receive.

Conclusion

33. The Commissioner is satisfied that the wider context and history to this request shows a long standing issue which has been thoroughly investigated on more than one occasion. It would therefore appear that the complainant is trying to reopen issues that have already been addressed.
34. The Commissioner has taken into consideration the number of previous information requests from the complainant, which he considers to be a voluminous amount on the same or similar subject. Also considered, is that the issue with Chartwells has already been dealt with by the Tribunal. The Commissioner noted the complainant's attitude illustrated in his correspondence to the University relating to his request.

35. He recognises that this request is a continuation of an obsessive campaign and that provision of the requested information will not resolve the issue of the complainant's dissatisfaction with the University.
36. The Commissioner accepts that to comply with the request is likely to have a detrimental effect upon the University which will cause an unreasonable burden, irritation and distress to the staff involved. To comply is also likely to lead to further communication from the complainant.
37. Therefore, the Commissioner has decided that this request can be considered as vexatious and that the University is correct to apply section 14 of the FOIA.

Right of appeal

38. 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

39. 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.
40. 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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