

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 April 2018

Public Authority: University of Hertfordshire
Address: Hatfield
Hertfordshire
AL10 9AB

Decision (including any steps ordered)

1. The complainant has requested information relating to the University of Hertfordshire's practices and procedures for academic staff career progression (promotion). The University of Hertfordshire (the university) considers the request to be vexatious under section 14 of the FOIA.
2. The Commissioner's decision is that the university has correctly applied section 14(1) of the FOIA. However, in failing to issue a refusal notice within the time for compliance the university breached section 17(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 3 May 2017, the complainant wrote to the university and requested information of the following description:

"I am making a Freedom of Information request regarding the university's practices and procedures for academic staff career progression (promotion).

Firstly, provide a detailed explanation of the process (the university calls it "Equate"). Please include in that description:

1. *A detailed summary of what requirements are placed on academic staff seeking a higher grade of responsibility (i.e., promotion) and remuneration. For example: what must a Lecturer do to be made a Senior Lecturer?*

2. *Describe the Equate process in detail.*
3. *Do academic staff have to produce self-evaluate reports, and is there an established word count that academic staff must meet in order to satisfy the Equate process?*

Secondly, provide several real case studies of academic staff seeking promotion (omit names for the sake of data protection) - using the School of Creative Arts as an example.

1. *Were those academic staff required to produce self-evaluative reports (please provide an accurate final word count for said reports)?*
 2. *Which member(s) of senior management staff read and reviewed said Equate applications?*
 3. *Which member(s) of senior management staff made the ultimate decision on whether said Equate application had been successful or unsuccessful?*
 4. *What were the final outcomes for those academic staff in each case study?"*
5. The university responded on 26 May 2017. It refused to provide the requested information because it felt that the university had "*disclosed all relevant information and that any further consideration of the matter will not be in the Public Interest*".
 6. The complainant wrote to the university on 29 May 2017, challenging its decision and asking it to reconsider its decision.
 7. Following an internal review the university wrote to the complainant on 26 June 2017. It stated that it considered the request to be vexatious.

Scope of the case

8. The complainant contacted the Commissioner on 28 August 2017 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case is to determine whether the university has correctly applied section 14(1) of the FOIA to the request for information.

Reasons for decision

Section 1 – general right of access

10. Section 1(1) of FOIA states any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject of course to the application of any exemptions that are appropriate.

Section 14 – vexatious and repeat requests

11. Section 14(1) of the FOIA states that "*section 1(1) does not oblige a public authority 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-Tier Tribunal considered the issue of vexatious requests in the case of the Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) (Dransfield) and concluded that the term could be defined as "*manifestly unjustified, inappropriate or improper use of a formal procedure*".
13. The Dransfield case identified four factors that may be present in vexatious requests:
 - the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester
 - harassment or distress caused to staff
 - the value or serious purpose of the request.
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. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

16. The Commissioner has identified a number of 'indicators' which may also be useful in identifying vexatious requests and are set out in her published guidance ¹. In short they include:

- abusive or aggressive language
- burden on the authority
- personal grudges
- unreasonable persistence
- unfounded accusations
- intransigence
- frequent or overlapping requests; and
- deliberate intention to cause annoyance.

17. 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.

18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request where this is relevant. However, it is important to recognise that one request can in itself be 'vexatious' depending on the circumstances of that request.

The university's representation

19. By way of background and in order to provide context and history, the university has explained to the Commissioner that the complainant was formally employed as a lecturer at the university. It went on to explain that the complainant has engaged in a campaign against the university in relation to him not being paid for his attendance of 10 days of continuing professional development (CPAD) training in October 2011, November 2011 and January 2012.

20. The university has stated that the campaign involved baseless allegations, correspondence with the Vice-Chancellor, a number of FOIA requests, and monthly emails to the Vice-Chancellor attaching invoices for payment for his attendance at the CPAD training.

21. The university has stated that the complainant's approach, language, attitude and requests are all vexatious. It has stated that whilst the specific request for information may not seem to appear to be vexatious,

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

when viewed with the context of the complainant's ongoing conduct, it states that it does assume that quality.

22. The university has stated that it has considered all of the relevant circumstances relating to the complainant's campaign against the university in order to reach a balanced conclusion as to whether the request is vexatious.
23. The university has identified that the following factors are indicators that the request is vexatious –
 - a. Personal grudge – the university has stated that the complainant is targeting specific employees and office holders of the university and therefore clearly has a personal grudge against certain individuals.
 - b. Unfounded accusations - the university has stated that the complainant's correspondence is based on unsubstantiated accusations against the university and specific employees. In particular, this request for information is specifically targeting the school in which the complainant was formally employed.
 - c. Intransigence - the university has stated that the complainant has taken an unreasonable entrenched position and rejects all explanations provided by the university.
 - d. Frequent or overlapping requests - the university has stated that the complainant submits frequent correspondence to different individuals within the university and submits new FOIA requests which it says all overlap. The university went onto explain that the complainant has made numerous FOIA requests, and requested further information and argued about each response.
 - e. No obvious intent to obtain information – the university considers that the complainant's requests have now gone beyond the legitimate use of the legislation to obtain information. It considers that the complainant is using the right of access under the FOIA to harass and annoy the university, given that he is not happy with its decision and position in relation to his request for payment for his attendance of 10 days of CPAD training.
24. The university has referred to its internal review response dated 26 June 2017 in which it stated that the complainant has "*submitted 5 Freedom of Information Act requests, where we have provided information, on the basis that we determined the disclosure of such information was in the public interest. It is clear, however, that the line between public interest and private agenda has been crossed such that responding to any further requests goes beyond the purview of what the Freedom of*

Information Act was designed to fulfil.” The university has stated that it has become clear that the value of the numerous requests made by the complainant, including this request, are limited and not in the public interest. The university has explained that in the complainant correspondence he continually seeks to argue points and challenge the university on the basis of alleged wrong doing, which the university says it has refuted. The university has gone on to explain that the complainant pursues matters in a highly personalised way by referencing specific employees of the university which it considers demonstrates that the information requested is of little benefit to the wider public.

25. The university has stated that the context and history is crucial to its decision regarding this request. It went on to explain that the complainant has made a series of requests and has engaged in extensive correspondence with the university for 14 months. It also stated that the complainant’s pattern of behaviour has also made it clear to the university that he will not be satisfied with any response and will send numerous follow up enquiries no matter what information is supplied.

The complainant’s representation

26. In the complainant’s submissions to the Commissioner, he has asked the Commissioner to consider that in the university’s response dated 26 June 2017 it deemed the request to be vexatious. However, when the complainant questioned the university on the veracity of this claim, the two subsequent emails from the university, dated 10 and 20 July 2017, did not repeat the claim that the request was vexatious, only that it was not in the public interest. This has lead the complainant to question whether it was ever a serious concern for the university or an attempt to discourage him from pursuing his request any further.
27. The complainant has also stated that he strongly believes that the information requested is in the greater public interest, when the university has obligations under the FOIA. Furthermore, the complainant has explained that the information requested is in the greater public interest because the Teaching Excellence Framework aims to rank and rate academics on their teaching abilities and the possibility of promotion, job performance, and remuneration are big factors in any career.

The Commissioner's view

28. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. She also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
29. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
30. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
31. The Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance and referred to in paragraphs 17-19 of this decision notice. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
32. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.
33. The Commissioner accepts that the request has purpose and value to the complainant as he has strong feelings that he has been unfairly treated in relation to pay and promotion. The Commissioner recognises that these issues may have a direct impact on the complainant and the

disclosure may therefore allow the complainant to resolve these issues. However, these are very personal issues and the Commissioner considers that there is likely to be an appropriate complaint or appeal process available for the complainant, such as from the relevant public body or court. In situations where an individual disputes the actions of a public authority, the Commissioner recognises that the appropriate complaint or appeal process should be followed, and that the purpose of the rights provided by the FOIA is not to replace such processes, or else be used to express dissatisfaction with the outcome of them.

34. The Commissioner has considered the context and history in which the request was made, and she notes that the complainant did raise the subject of the request in his initial complaint to the university which was never addressed. However, the Commissioner recognises that even when the university has seemingly attempted to address or resolve some of the other issues relating to the request and provide some of the information sought by the complainant from his requests, the complainant has not been satisfied with the response and requested further information and argued about each response.
35. The Commissioner notes that in the university's submission to her it has stated a number of 'indicators' that identify a vexatious request. These include the following –
 - Personal grudge
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - No obvious intent to obtain information
36. However, the Commissioner is of the view that the university should have explained more fully why it was applying section 14(1) of the FOIA, for example –
 - When considering the background and history of the request, some of the complainant's FOIA requests and correspondence could be viewed as containing aggressive language
 - With regards to the personal grudge indicator, the university could have explained that the complainant clearly feels the university has not treated him fairly with regard to pay and promotion
 - With regards to the overlapping requests indicator, the university could have explained that a new request was submitted before an internal review was completed on the previous request.

37. The Commissioner's view is that this request, given the context of the wider dealings between the university and the complainant would cause a disproportionate level of disruption on the university. In particular, the evidence of the complainant's previous dealings with the university suggests that, far from resolving the complainant's concerns, disclosure would be likely to result in the complainant sending further communications, including more information requests.
38. The Commissioner recognises that the complainant had his reasons for requesting the information. He is clearly not satisfied with how he was treated by the university in relation to pay and promotion. However, disclosure of the requested information would do nothing to resolve that dispute. In view of this, the Commissioner considers that the request for information has no wider value or purpose beyond the complainant's pursuit of his personal grievance against the university.
39. All of this leads the Commissioner to conclude that the impact of the request on the university is disproportionate and unjustified by any serious purpose or value. The Commissioner is satisfied that the request is vexatious and section 14(1) has been correctly applied.

Section 17 – refusal of request

40. Section 17(1) of the FOIA requires that where a public authority is relying on a non-disclosure exemption to withhold information, it must inform the requester of that fact, specify the exemption relied on and explain why it applies (if not apparent), no later than 20 working days after the date on which the request was received.
41. The Commissioner notes that the university has referred to the public interest when responding to the request and provided the complainant with the link to the Commissioner's guidance on the public interest test, which has given the impression that a public interest test was carried out. However, as explained in paragraph 11 of this decision notice, section 14(1) is not subject to a public interest test.
42. In the circumstances of this case, the university did not seek to apply section 14(1) of the FOIA until it sent the complainant the outcome of its internal review. However, the university did not properly explain to the requester why it considered the request to be vexatious. By failing to specify the exemption it was relying on to withhold the requested information, and by failing to explain why it applied, within the time for compliance, the university has breached section 17(1)(b) and (c) of the FOIA.

Right of appeal

43. 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

44. 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.
45. 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

Pamela Clements
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