

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 September 2024

Public Authority: Council of Lancaster University
Address: University House
Bailrigg
Lancaster
LA1 4YW

Decision (including any steps ordered)

1. The complainant requested information connected with a previous request and questions relating to it. Lancaster University (the university) refused the request, citing section 14(1) of FOIA – vexatious request.
2. The Commissioner's decision is that the request was vexatious and therefore the university was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require further steps.

Request and response

4. On 19 February 2024, the complainant wrote to the university and made a request for information under the FOIA in the following terms:

“With reference to your response dated 01/02/2024 in which the University discloses that it ‘holds a further 4 emails which contain the reasons for [redacted personal data].’ meaning that the University confirms (a.) that it holds a total of 8 emails containing the said reasons and furthermore (b.) that only 4 of these were demonstrably disclosed to and thus considered by the Information Commissioner in arriving at FOI Decision notice IC-193080-V7D4 dated 16 March 2023. Exemption under FOIA 2000 sections 21,

40(2) was upheld but not under sections 38(1)(a) and 38(1)(b).

In view of the spirit of the Commissioner's comments in Paragraph 14, please review your response dated 01/02/2024 with reference to Paragraph 24 of IC-193080-V7D4 dated 16 March 2023 to confirm that all 8 recorded emails were disclosed to the Commissioner when arriving at that decision.

Designating the 8 relevant items individually as Email 1.) > 8.) in which nos 1.) > 4.) are (ORIGINAL) and 5.) > 8.) are (FURTHER), please disclose;

1.) do the senders of Emails 4.) > 8.) specify their desired anonymity as did those of 1.) > 4. (Confirmed by IC-193080-V7D4 Paragraph 24)?

2.) how many of those in (F) constitute a direct reply to one or more in (O)?

3.) the date sent and/or received (as relevant) of each item sequentially in both groups (O) and (F) separately.

4.) how many in either group are addressed to or received from ?

5.) how many in either group are designated ?

6.) how many of those in (F) constitute a direct reply to issues mentioned in one or more in (O)?

7.) bearing in mind that they relate to the University's investigation of the reasons provided in (O) how many in (F) mention or include any or all the keywords acknowledged to be found in (O) and so refer to facts and not to opinions on which the [personal data redacted] upheld by the Commissioner might be seen as not being applicable? (Ref: FOI-5664 Response dated 01/11/2023)

8.) how many in (F) include questions or similar requests for evidence as verification and substantiation of the reasons [redacted personal data], and/ or indicating the direction, time taken, extent and thoroughness of the University's investigation of [my] complaint?

9.) how many in (F) are to or from {undisclosed}@lancaster.ac.uk?

10.) does any in (F) appear to be to or from any living person acknowledged to be or to have been identifiable as the head of any

Lancaster University Department?

Finally, considering the Commissioner's directive relating to the Human Rights Act, (IC-193080-V7D4 Paragraph 15) and the University's responses (FOI-5110 dated 19/04/2023) does the University maintain the position expressed, bearing in mind that should any information as to whether the REASONS(S) for [personal data redacted] be withheld, any consideration as to whether the decision was PROPORTIONATE is fatally obfuscated?"

5. On 8 March 2024 the university responded. In its refusal notice it cited section 14(1) of FOIA – vexatious request.
6. The complainant asked for an internal review on 9 May 2024.
7. The university refused to provide an internal review because the request for review was just beyond the time limit it had specified in its refusal notice.

Reasons for decision

Section 14(1) – vexatious requests

8. The following analysis considers whether the request was vexatious.
9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The word “vexatious” is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
16. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The university's view

17. The university provided the Commissioner with the wider context and history behind its decision to cite section 14(1) of FOIA. Much of this information was provided to the Commissioner 'in confidence' and cannot be repeated here for reasons of personal data. It involved events that took place several years ago within a group that was autonomous

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

to the university and not subject to FOIA. However, some of the group had IT accounts and privileges, such as access to the university's IT facilities and room booking. Communications from the group were sent from these accounts and some in-person events were held in university buildings. "This led the requester [complainant] to incorrectly believe that the Group was part of a University department."

18. The university explained that the complainant had sent a complaint to the university's Vice-Chancellor about what had occurred in the group which was then investigated by the Vice-Chancellor's Office. It was subsequently explained to the complainant that they would need to take the matter up with the group as the university had no authority.
19. Just after this the Information Governance team received a request which became a complaint to the Commissioner and ended in his decision notice - [IC-193080-V7D4](#). The university stated that the Commissioner "determined that the University had acted correctly in the handling of the request" with the exception of part nine. It disputes the complainant's assertion that the Commissioner did not uphold all the exemptions. In fact, the Commissioner did not consider all the exemptions as he had already determined that the information should not be disclosed under section 21 and section 40(2) of FOIA.
20. The university details FOI requests it then received connected to the same complaint. On 19 August 2022 there was a request "essentially [...] asking for the same information exempted from" the request that was considered by the Commissioner in IC-193080-V7D4. This was again exempted.
21. The complainant made a further FOI request on 8 June 2023. This request and the university's response was the subject of another complaint to the Commissioner. The university argues that the complainant's "behaviour in relation to this specific request" is "evidence that the requester has no intention to seek information from the University but is simply attempting to harass and cause an unreasonable burden on the University as a means to vent their anger and frustration..." at what had occurred. Its view is that the FOIA was not intended for this purpose.
22. The request had asked for personal professional details of the university's Information Governance Team to which the university had responded by saying that the information was reasonably accessible to them and providing an URL leading to the webpages that listed the names and job titles of the team. The following review request was as follows:

“Please carry out an internal review of the response to my request dated 21 June 2023. It is my wish to be able to enquire of one or more individual, rather than have my enquiry dealt with impersonally by an amorously anonymous ‘Team’ acting as a jury in a case with either charge, prosecution defence or any al context of Due Process”

This response led to a review which upheld its refusal notice but the complainant subsequently explained that they had not wanted it to be treated in this way. The university suggests that, with hindsight, this demonstrates vexatiousness.

23. A further complaint was raised with the Commissioner by the complainant concerning the university’s responses to the 8 June 2023 request. This complaint was subsequently closed.
24. The university then received another request (5 January 2024) relating to the original incident. Below is part of that request:

“c) The University admits to holding an undisclosed additional number of emails in which some or all of the information captured in the 4 was repeated and captured.

To ensure perfect clarity I submit this ORIGINAL QUESTION expressed in algebraic format;

b) $4 + c) <\text{an undisclosed number}> = x$ where x is an integer. Please reveal the numeric value of x (above)”

The university considered whether this request was an example of “vexatiousness by drift” as in [Dransfield](#). It decided, ultimately, to respond to the request.

25. When it received the request that is the subject of this decision notice, the university “made the decision to reject” the request as “vexatious”. It explained that the complainant was unable to “articulate on what grounds they were challenging the original response”, just stating that they wanted a review. The review was not conducted as the complainant had asked for it beyond 40 working days (41 working days) after the response had been provided.
26. This request was the sixth FOI request from the complainant, stemming from the original incident. There have also been two requests under data protection legislation, three complaints to the Commissioner that did not require the university to take any further steps, “For all but one minor point”. All the requests “have a common theme and all stem from the specific grievance the requester has”. The university contends that “the requester views the internal review process, and FOI requests in

general, as a tool for them to vent their frustration and irritation at the University and to cause further burden to it". Its view is that because the complainant cannot obtain information from the group because it is not subject to the FOIA, they have made FOI requests to the university as it is subject to the legislation.

27. The university characterises the request as,

"extremely narrow in scope, and even then, it is difficult to understand the benefits to the public in the pursuance of a wholly private matter[...] raising queries in relation to the minutiae of information held..."

28. It argues that "the request has been made for purely private reasons with no public interest in the release of the requested information, and therefore has not been made within the letter or the spirit of the Act". Therefore, "It is almost impossible to see how responding to the request would serve the wider public interest, especially when balanced against the burden on the University." The university contends that "Requests of this nature do cause disproportionate disruption to public authorities and take resources away from processing valid requests submitted in the public interest."

29. In this case,

"This is especially pertinent [...] as the information requested relates to a group which is autonomous to the University [...] and the only reason the University hold the majority of this information is due to a complaint generated by the requester in the mistaken understanding that this group was a Lancaster University activity".

30. The university argues that the "request has no serious value or purpose, and the release of the information would serve no wider public interest. The university said it would not help the public understand how it made its decisions, hold it to account for its performance, or ensure transparency or justice.

31. When the complainant was asked for further clarification, the university states that they, sent their original request and stated that "further consideration of this document whatever it's (sic) shortcomings will clarify your understanding of the specific points I raised therein". The university points to the ICO guidance concerning section 14 of FOIA, noting that -

"rejecting advice and attempts to assist out of hand" and "taking an unreasonably entrenched position" are two of the factors which may

indicate that a request may be considered to be a form of harassment, as identified in the Dransfield decision'.

32. A further email from the complainant was sent to 25 members of staff within the Division of Strategic Planning and Governance. The Information Governance team is in this division -

"I am advised by the Office of the Information Commissioner to respond to your FOI-5819 misunderstanding by re-submitting my original request and your replies dated 21 February 2024 for Second Level review".'

The university contends that the complainant is aware of the "email addresses by which to send requests or clarifications to, having made a number of requests via these email addresses in the past." It surmises that the sending of the same "email to 25 members of staff within the wider division that the requester was attempting to further increase the burden of this latest request on the University".

33. The university has provided a "number of emails held by the university" previously "along with other ancillary information, and we feel that we have given this requester a certain amount of leeway in previous requests of this nature". Its view is that this request "crosses the line into vexatiousness due to the lack of serious value and/or purpose, the lack of public interest in the requested information, and the associated burden on staff and the authority". The university suggests that "communications around the request and the request itself, may fulfil the 'harassment' theme identified by the Upper Tribunal in the Dransfield case".
34. It outlines in more detail the detrimental impact of complying with the request: "This places an undue burden on the University to answer requests, internal reviews and ICO complaints, which are increasingly without merit or any genuine public interest." The university receives approximately 300 FOI requests per year and its view is that responding to the complainant as described takes "significant time away from genuine requests which have been made in the public interest".
35. Some aspects of the complainant's behaviour are considered to be "harassment towards the University and/or staff". The university points to several requests for clarification which ended in the complainant resending the original request. Earlier in this decision notice the university noted that the Commissioner's guidance and the Dransfield decision state that "rejecting advice and attempts to assist out of hand" and "taking an unreasonably entrenched position" are two of the factors which may indicate that a request may be considered a form of harassment". The university questions whether, as the complainant had

stated, the Commissioner would give advice to a complainant to resubmit their original request when the public authority has asked for clarification. It repeats its belief that the complainant was aware of the correct email addresses to send requests and clarifications to but sent "the 'clarification' email to 25 members of University staff". This meant that the Information Governance team had been contacted by a number of staff members who received this email and were confused. The Information Governance Manager was required to explain in a Teams message that they need take no action. The university suggests that the sending of this email to so many people could be seen as a form of harassment.

36. Additionally, the university says that the complainant's requests 'often contain allegations of University wrong doing or that we are "hiding behind the letter of the law"'. On 24 August 2022 the complainant wrote: "The infantile 'We're not gonna tell you!' approach is unworthy of a Public Body or even of an autonomous Body within it's ambit".
37. On 27 May 2023 the complainant stated "The response is evasive" and 'accuses the University of acting in a "tautologically absurd" manner'. Referring to the decision notice in IC-193080-V7D4 the complainant said:

"The Commissioner rather pointedly ignored the Public Interest aspect" and that "The relief at the University's inability to answer and thus avoid further consideration of the Reasonableness and Proportionality of my [redacted personal data] on the basis of acknowledged recorded information was almost tangible."

38. The university refers the Commissioner to his (unrelated) decision in [IC-292879-T4M4](#) that allegations against staff -

"acting out their roles and within the framework of the Act by applying exemptions which the Commissioner has ruled are valid (as per ICO Decision Notice [IC-193080-V7D4](#)) causes further distress for these staff".

There is the repeated attempt to reopen issues that the University has deemed to be closed and ruled on by the Commissioner. It considers that the complainant "is, at times, more interested in arguing points and haranguing the University than they are in making genuine [re]quests with serious value or purpose".

39. When the university refused to provide "an 'analysis' of the emails it held which is not a requirement of the Act" the complainant stated on 8 August 2023:

“The University holds no information which would indicate that an analysis of whether the Human Rights Act 1989 requirement that any [redacted personal data] be both reasonable and proportionate pertain to a public body offering adult education has been undertaken. We therefore have no information by which to answer your request. This is tantamount to declaring;

We have forgotten the combination to the Safe Deposit Box in the Secure Vault at Fort Bailrigg where our only copy of HRA 1989 is sequestered and even if it were not so, our dog would eat the paperwork so we couldn't answer your request.”

40. The university maintains that the requests “have been made for purely private reasons with no public interest in the release of the requested information”. Responding to this request “would serve no wider interest, especially when balanced against the burden that it places on the University...” The university does not believe that providing information “would assist the requester” in understanding what is at the root of their discontent.

The complainant's view

41. The complainant's initial complaint to the Commissioner explained what they believed had “triggered Section 14. I had the temerity to address my singular insignificant unadvised self to the Whole TEAM. How very DISRUPTIVE !!!”.
42. The complainant explained to the Commissioner that they are keen to resolve this matter informally and referred to the Commissioner's letter which includes the following: “Where possible the Information Commissioner prefers complaints to be resolved informally [...]”. The complainant also referred to the Commissioner inviting the university to revisit their request. The Commissioner notes that these two expressions are included in the Commissioner's investigation letters in an attempt to reset an often entrenched position on both sides.
43. The complainant contended that they had considered “my own perception of anything in or about my request that LU might possibly have perceived or interpreted as vexatious”. They described their “intention in addressing all 25 members of their previously unrevealed Division of Strategic Planning and Governance (as distinct from simply 'Information and Governance' <foi@lancaster.ac.uk>) was to make clear my irritation at The Team's form of address. I would certainly not have been irritated had 'Dear [redacted title and name]', rather than the quasi-personal 'Dear [redacted whole name]' been the formula”.

44. The complainant suggests that -

“one or more of the 25 will have been legally qualified and fully conversant with FOIA and previous interpretations thereof, it seemed the intention was to intimidate, thus inhibiting any further reference to or investigation of the potential Human Rights Issue clearly acknowledged by the Commissioner in IC-193080-V7D4...”

The Commissioner's decision

45. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA. The university has provided the Commissioner with additional information to support the citing of section 14(1) of FOIA that cannot be included here for personal data reasons.
46. The university has provided information to the complainant in response to previous requests. IC-193080-V7D4 has already been considered by the Commissioner and this request appears to be an attempt to revisit it.
47. The Commissioner has spoken to the complainant who provided him with the context and background to this request. He is unable to set out those details for reasons of personal data, both the complainant's and third parties. The complainant did not want to use feelings but did say that they felt as if they were in a David and Goliath situation with the university.
48. Although the Commissioner understands the complainant's need to examine how this occurred and the resentment it has clearly caused, he considers this request to be an example of what has now become unreasonable persistence and, if the university provided information, is only likely to lead to more requests. The Commissioner does not accept that the complainant is going to find closure by making FOI requests stemming from an incident that occurred some years ago involving third party personal data. The university has explained the scattergun approach the complainant has taken by sending emails to multiple addresses which resulted in a diversion from the Information Governance's core functions. There is very limited value in complying with this request, except to the complainant, who appears to have exhausted other avenues and wishes to continue a dispute via the FOIA route. This is not what the legislation was intended for and the Commissioner therefore finds that the university is entitled to rely on section 14(1) of FOIA.

Right of appeal

49. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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