

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 September 2011

Public Authority: The University of Lancaster
(the "University")
Address: Bailrigg
Lancaster
LA1 4YW

Summary

The complainant made six requests for information on the same day to the University that were on a diverse range of topics. The University applied section 14(1) and refused to respond to these requests, stating that they were vexatious. During the course of the investigation, the University reconsidered its position in relation to one of the requests and provided the information. In relation to the remaining requests, the Commissioner has determined that they are vexatious. He therefore upholds the University's use of section 14(1).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 27 January 2011 the complainant made six separate requests for information. They were worded as follows:

[1] *"I would like the totals of answers for each answer of each question of the counselling self-referral form online. I would like to be told the period that this data was collected in and the total number of applications received."* [University reference 812]

[2] *"I would like to know the average, minimum and maximum time for work submitted via the estates helpdesk to be completed (status changed to "admin completed") for requests over the last academic year. I would like to know this per major category."* [University reference 813];

[3] *"I would like to know if the model selected for the learning zone doors (the circular ones - 'Gunnebo Hi-Sec') have the option for bullet proof glass selected. What specific options were chosen for these doors? During what periods was the weight functionality active and not active (I think it was switched off permanently several weeks into the opening of the learning zone). How many incidents have been reported regarding the doors not working/ complaints?"* [University reference 814]

[4] *"How much did the university pay for ipad initial purchase for use in the learning zone, and how many are there / intended to be? What model was chosen? How much direct expense has been incurred in supporting the purchase and setup of ipads for loan in the learning zone? What is the expected / intended purpose / use-case for the ipads? What are the equivalent cost figures for the laptops loaned from the learning zone?"* [University reference 815]

[5] *"I would like the total and per module (and module name / mnemonic) marks (where not allowed, the average, min, max) (split into coursework / exam where possible) for modules in undergraduate computer science and computer science joint and computer science department run undergraduate degrees, for the years of graduation individually 2004 and 2005. I'd also like to know the number of people on the courses each of these two years."* [University reference 816]

[6] *"What are the names of the staff who were in the following positions for the computer science department, and what were the periods of holding office? (head of department deputy head of department)." [University reference 817]*

For ease of reference these will be referred to as requests (1) to (6).

3. On 1 February 2011 the University issued separate refusal notices for each request. In all of these refusal notices, it explained that it would not answer the requests because they were vexatious, and as such section 14(1) applied.
4. On the same day, the complainant requested an internal review.
5. On 4 February 2011 the University communicated the result of its internal review, and upheld its position.

The Investigation

Scope of the case

6. On 10 February 2011 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - the University's internal review process appeared defective; and
 - it had wrongly characterised his requests as vexatious.
7. During the course of the investigation, the University agreed to disclose the information it held in relation to request (6). Subsequently the complainant agreed that the Commissioner could focus solely on the handling of requests (1) to (5).
8. The Commissioner was also referred two other sets of requests made by the complainant to the University. These are being considered by the Commissioner as a separate case, under case reference FS50381927.
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

10. On 27 June 2011 the Commissioner wrote to the University with his preliminary enquiries. He received a response on the following day.
11. On 29 June 2011 the Commissioner made detailed enquiries of the University. He received a response on 27 July 2011. In this response the University stated that it was now prepared to disclose some of the previously withheld information.
12. On the same day, the Commissioner wrote to the complainant to confirm that he had received the information for request (6). This was confirmed the next day.

Analysis

Substantive Procedural Matters

Section 14(1)

13. Section 14(1) states that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".

14. The University has argued that requests (1) to (5) are vexatious. The complainant disagrees.
15. For this exemption to apply, the Commissioner must consider the situation as it was on the day the requests were received. Events that occurred after this date cannot render the request vexatious.
16. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the "Tribunal") in *Ahilathirunayagam v Information Commissioner's Office* [EA/2006/0070] (paragraph 32) – that the term vexatious must be given its ordinary meaning, i.e. would be likely to cause distress or irritation. Whether the request has this effect is to be judged objectively. This has been reaffirmed by the Tribunal in *Gowers v Information Commissioner's Office and London Camden Borough Council* [EA/2007/0114] ("*Gowers*") (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.
17. The Commissioner has also endorsed the Tribunal's views in *Welsh v the Information Commissioner* [EA/ 2007/0088] ("*Welsh*") (paragraph 21) where it stated:

"In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another."

18. The Commissioner has therefore taken into account the complainant's previous interaction with the University when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context. The University has argued that the request should be regarded as vexatious after considering its context.

19. The Commissioner has issued guidance to assist in the consideration of what constitutes a vexatious request.¹ This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments.
20. The Commissioner generally consider arguments put forward in relation to any of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
 - whether compliance would create a significant burden in terms of expense and distraction;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request can fairly be characterised as obsessive;
 - whether the request has any serious purpose or value; and
 - whether the request is designed to cause disruption or annoyance.
21. The University has told the Commissioner that it believes the first four of the criteria noted above are satisfied by the requests. The Commissioner will consider each factor in turn.
22. When considering the University's reliance upon section 14(1), the Commissioner has also had regard to the Tribunal's decision in *Welsh* at paragraph 26. In that case, the Tribunal considered the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.
23. He will also consider, should any of the requests be found to have a serious purpose, whether that purpose is so serious that it can outweigh all the other factors that indicate that the request was vexatious and so render the request not vexatious.

¹ This guidance is called 'When can a request be considered vexatious or requested?' and can be located at the following link: http://www.ico.gov.uk/~_/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

Do the requests constitute a significant burden in terms of expense and distraction?

24. When considering this factor the Commissioner endorses the Tribunal's approach in *Welsh* (paragraph 27), which stated that whether a request constitutes a significant burden is:

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."

25. The Commissioner therefore expects the University to be able to show that complying with the request would cause a significant burden both in terms of costs **and** also diverting staff away from their core functions.

26. The Tribunal in *Gowers* emphasised at paragraph 70:

"...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor"

27. The University has confirmed that it was both the history of the requests and these particular requests themselves that have led to it experiencing a significant burden.

28. The Commissioner will consider the University's arguments about the expense first, before going on to consider the level of distraction.

29. The University has explained that the requests in question were received on the same day. It estimated that it would take at least 41 hours to answer them. It explained that the burden would be particularly pronounced for requests (4) and (5). Request (4) would require it to audit all of its technology, accounts and learning contracts and it estimated that this would take 15 hours. Request (5) would require it to carefully check its historical records about exam results for every student that did the course in the set years. It noted that the requests were on diverse topics and possibly could not be aggregated. However, the burden would have been real all the same had it not declared the requests vexatious.

30. When considering the history, it explained that it had received 15 previous requests for information from the complainant. Nine of these were in the four months before these requests, while the others were received in earlier years. It estimated that it had spent 53 hours in answering the previous requests. It noted that the particular requests that caused the most work concern the compilation of statistics for computer science courses for the years subsequent to those quoted in request (5). Therefore the Commissioner considers that the University could evidence that a similar request for more contemporary information

took between 8 and 10 hours of work and this adds weight to its contention that the burden it has experienced as being real. Therefore he considers that the context and history of the requests and their current distribution renders them burdensome in terms of expense.

31. Taking these factors into account, the Commissioner is satisfied, from the evidence supplied by the University, that the provision of complete responses to these requests would involve a substantial burden in terms of expense.
32. The Commissioner has gone on to consider whether complying with the requests would distract staff from their core functions.
33. The University explained that there is a burden in terms of distraction from its core function. This happens in two ways. Firstly, its compliance team was burdened by the high concentration of requests. While, openness and transparency are important concerns, in this case the volume of requests was likely to consume all its capacity and consequently reduces the service that it can provide to other stakeholders. Secondly, the University evidenced that the remaining requests would inconvenience the information holders too. This was due to the nature of the requests which mostly ask for numerical breakdowns of information that is not required for that service to function and would require considered reflection to ensure that the data protection rights of data subjects were respected. It would not therefore be possible to provide the base information to save time. For example, request (1) asks for detailed information from the University counselling service. The information is not normally gathered and would require a resource stretched unit to be diverted from client-focussed care. It could not provide the actual surveys to the complainant because it would involve the disclosure of sensitive personal data. For request (5) it would need a breakdown of work of all of the University's various Information Technology services and this would require the input of senior staff in that service causing a distraction from their usual support service.
34. The Commissioner is satisfied that considering the wording of the requests, their distribution and the input that they would require from various members of the University's staff, they can fairly be said to constitute a significant burden in terms of distraction as well.
35. The Commissioner is also satisfied that a great deal of the University's time has already been spent dealing with previous requests from the complainant. He notes that the University should indeed offer support to the students in its care. However, he does not consider that the provision of the information requested can be said to be connected to it providing education to the complainant.

36. The Commissioner has considered the reasoning of the Tribunal in *Coggins v Information Commissioner* [EA/2007/0130] ("*Coggins*") about what constitutes '*a significant administrative burden*' and is satisfied that dealing with the request in its context would have contributed to a '*significant distraction from its core functions*' (paragraph 27). Indeed, the Commissioner is satisfied that the number of requests have caused a real burden for the University.
37. Assessing all the circumstances of the case, the Commissioner finds that the five requests dated 27 January 2011, taken in the context of the hours spent dealing with the previous requests and the resulting distraction from the University's core functions, would impose a significant burden in terms of both expense and distraction. It is apparent that the five requests form part of a pattern of correspondence which has created a significant workload in the past and would have led to further work had they not been refused on the basis that they were vexatious. He therefore finds in favour of the University on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1) on the facts of this case.

Do the requests have the effect of harassing the University or its staff?

38. The University has argued that the request has had the effect of harassing itself and its staff. It has explained that it understands that this may not have been the intention of the complainant, but when assessing the effect, intention is not relevant.
39. It explained to the Commissioner that it took this view for the following reasons:
- the volume and distribution of the requests that have been made;
 - in particular, a number of requests (including request [5]) had been in relation to Computing where a single member of staff has been required to provide very considerable input; and
 - a number of other requests were focussed on the University undertaking its duty of care and some requests focused on the individual staff who were involved in the standard protocol in this matter. Consequently, those individual staff felt uncomfortable.
40. The Commissioner notes that the requests for information are worded in a cordial fashion. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the requests and not the requester that must be considered. It is an objective test: so a reasonable person must be likely to regard the request as harassing or

distressing. The Commissioner's guidance states that the features that could make a request have the effect of harassing the public authority or its staff are:

- volume and frequency of correspondence;
- the use of hostile, abusive or offensive language;
- an unreasonable fixation on individual members of staff; and
- the mingling of requests with accusations and complaints.

41. The Commissioner has already noted that the volume and frequency of correspondence was considerable in this case. However, having considered the spread of the requests and what they have asked for, he does not feel that the volume and frequency of correspondence can be said to be enough to amount to harassment by themselves.
42. There is no hostile, abusive or offensive language in this case. In relation to the arguments about fixation on individual staff, while he understands that those individuals felt less than comfortable in the circumstances, the Commissioner does not consider that they amount to an unreasonable fixation in this case.
43. There is no mingling of requests with accusations and complaints in this case. However, complaints and requests do often have similar themes. The Commissioner considers that this may be a valid point in relation to requests (1) and (2). It must be noted that the Commissioner cannot judge the veracity or otherwise of the complainant's concerns. However, he considers that it is appropriate to consider the way that those concerns have been expressed and followed through. Having examined the information on file, the Commissioner considers that the way in which the requests in question were handled indicates a University doing its best to deal with what would seem at the time to be interlinking, endless and difficult requests.
44. The Commissioner has considered the arguments of both sides and considers that this is a finely balanced factor. He finds that the evidence is not strong enough for him to find in the University's favour and has therefore placed no weight on it.

Can the requests be characterised as obsessive?

45. It is the Commissioner's view that obsessive requests are usually a very strong indication of vexatiousness. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.
46. The University argued that these requests should be regarded as obsessive, as:

- The volume and frequency of the correspondence strongly indicate that the requests are obsessive.
 - The complexity of what is being asked for also exacerbates the burden of the requests.
 - The themes of the requests are often consistent. For example, request (5) was one of four requests about Computer Science information. Requests (2) and (3) are two of four requests about the Learning Zone. Request (1) is part of a theme of requests about the University's treatment of a welfare complaint.
 - Some of the requests have tangential relevance to other formal complaints that have been made. In the University's view, these complaints had already been dealt with comprehensively.
47. As above, the Commissioner has noted that the arguments about burden and the complainant's general approach are supported by the evidence. In the Commissioner's view, this level and continual flow of requests demonstrates behaviour of an obsessive nature.
48. The Commissioner has considered where the balance lies in this case and notes that he is considering the situation on 27 January 2011, and the combined effect of receiving the five requests on the same day. The Commissioner accepts that at times there is a fine line between obsession and persistence and each case should be determined on its own facts.
49. The Commissioner's guidance states that it will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they already have independent evidence on the issue (e.g. reports from an independent investigation). The more independent evidence available, the stronger this argument will be. However, this is not a case where there is strong independent evidence on the issues that have been raised by the requests.
50. The Commissioner also appreciates that there is importance in accountability and transparency where possible. However, against this he also feels that it is important that public authorities are able to use their resources effectively to promote the public good. Protection should therefore be provided where a sequence of parallel requests become a continuous burden on the public authority's resources.
51. In this case, the Commissioner considers that the complainant's general approach has been obsessive and the Commissioner considers that the requests have an obsessive quality. The Commissioner therefore accepts that a reasonable public authority would find this request in its context obsessive, so also finds in the University's favour on this factor.

52. However, the Commissioner has not placed as much weight on this factor, for he considers that the obsessive behaviour is less pronounced in this case than the burden that has been experienced.

Do the requests have value and/or a serious purpose?

53. The University argued that the requests had no real serious purpose or value. It explained that it had come to this view for the following reasons:

- that it believed that the way the requests were worded meant that they were focussed on matters of very limited public interest;
- that it believed that its response to previous requests had already satisfied the majority of that limited public interest;
- that the statistical analyses and breakdowns of the minutiae are not considered to be of serious value either to the applicant or the public at large; and
- that the same evidence was not required in relation to supporting any complaints that it was aware of.

54. The Commissioner has considered the requests and whether the information that has been sought could be said to have a serious value. The Commissioner recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. However, he does not consider that these particular requests could be seen to objectively have a serious purpose or value in providing transparency.

55. He therefore finds that this factor also favours the University.

Could a reasonable public authority refuse to comply with the requests on the grounds that they were vexatious?

56. The Commissioner recognises that there is sometimes a fine balance between protecting a public authority from meritless applications and the promotion of the transparency in the workings of the authority.

57. The University explained that it had not applied section 14(1) lightly. Indeed its response to these requests mark the first occasion in over 450 requests that it had received under the Act (from any requestor) where section 14(1) has been used by it (as noted above, 15 of those previous requests were from the complainant himself). The University has explained that it takes its responsibilities under the Act seriously

and that it supports accountability and the democratic process. However, it does not believe it is right for a single applicant to compromise its ability to respond and plan for information compliance in an efficient manner and that these requests should be regarded as vexatious. The Commissioner considers its reasonableness is further supported by the provision of information for request (6), which he considers had a more serious purpose.

58. He has had regard to the Tribunal's decision in *Welsh*, where it commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor mentioned in his guidance to be made out from his guidance for the requests to be correctly characterised as vexatious.
59. In reaching a decision in this case, the Commissioner has considered all the evidence presented in this case, including the history and context of the requests. The Commissioner is satisfied that the requests satisfy three factors of his guidance – they constitute a significant burden in terms of expense and distraction, were obsessive, and had no serious purpose or value. Therefore he has found that a reasonable public authority could objectively find that the five remaining requests dated 27 January 2011 were vexatious.
60. He therefore upholds the University's application of section 14(1) to the five remaining requests.
61. He emphasises that this determination was made on the circumstances as they existed on 27 January 2011 and that every request should be considered on its own merits. The University must continue to consider the requests and not the requestor should it receive further requests in the future.

The Decision

62. The Commissioner's decision is that the University dealt with the five remaining requests for information in accordance with the Act. He considers that the five requests were correctly characterised as vexatious and that the exclusion in section 14(1) of the Act applied to them.

Steps Required

63. The Commissioner requires no remedial steps to be taken.

Right of Appeal

64. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

65. 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.
66. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 12th day of September 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
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SK9 5AF**

Legal Annex

Section 1 - General Right of Access

Section 1 of the Act provides that:

- (1) Any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”
- (3) Where a public authority –
 - (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”
- (4) The information –
 - (a) in respect of which the applicant is to be informed under subsection (1)(a), or
 - (b) which is to be communicated under subsection (1)(b),is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”
- (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”
- (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Section 14 – Vexatious or repeated requests

Section 14 of the Act provides that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.