

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 January 2014

**Public Authority:** Royal Holloway University of London

**Address:** Egham Hill  
Egham  
Surrey  
TW20 0EX

#### **Decision (including any steps ordered)**

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1. The complainants requested information concerning the provision of legal advice about the composition of the Academic Board at the Royal Holloway University of London ("RHUL"). RHUL refused the request under section 14(1) and 14(2) of the FOIA. The complainants do not accept the application of section 14. They also argue that RHUL has not provided a valid refusal notice as it does not provide particulars of any internal review procedure or confirm that such a procedure does not exist.
2. The Commissioner's decision is that RHUL is correct to apply section 14(1) of the FOIA to the request and is entitled to refuse to conduct an internal review. No steps are required.

#### **Request and response**

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3. In this case the request has been submitted by a group called The Royal Holloway University and College Union Governance Working Group ("GWG"). This decision notice has therefore referred to the group as the complainants.

4. Where RHUL and the complainants have referred to RHUL as "the College" in their responses, the decision notice has used this term to denote RHUL.
5. On 3 September 2013, the complainants wrote to RHUL and requested information in the following terms:

*"This request for information concerns the provision of external legal opinions about the composition of the Academic Board, as specified below.*

1. *Information held by Royal Holloway concerning instructions issued to the College Secretary's Office by the College Council (since September 2012) to seek external qualified legal advice about the composition of the Academic Board.*
  2. *Information held by Royal Holloway about correspondence (since September 2012) between Royal Holloway and external legal organisations about the composition of the Academic Board. Please note that this request for information explicitly covers any legal advice or opinions concerning the composition or planned composition of the Academic Board provided by such legal organisations to Royal Holloway."*
6. RHUL responded on 27 September 2013. It stated that it considered the request to be vexatious under section 14(1) and 14(2) of the FOIA. It explained its reasons and informed the complainants that it did not consider it was appropriate to offer an internal review on this occasion.
7. RHUL informed the complainants that they could appeal directly to the Information Commissioner's Office (the "ICO") for a review of this decision and provided a link to the complaints pages on the ICO website.
8. The complainants argued they had not been provided with a legally valid refusal notice as they were not given details of how to request an internal review.
9. On 11 October 2013 RHUL informed the complainants that it had reviewed its original response and it upheld the application of section 14 to the request. RHUL explained that it had refused to perform an internal review in an attempt to stop the intensive use of the College's scarce resources by this group of complainants. It explained that their pattern of behaviour had placed a considerable strain upon the Secretariat staff and it did not consider that it was in the public interest to respond to their continual request for reviews and clarification once responses had been provided.

## **Scope of the case**

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10. The complainants contacted the Commissioner on 21 October 2013 to complain about the way their request for information had been handled. They argued that RHUL had failed to comply with section 17(7)(a) of the FOIA.
11. On 5 November 2013 the complainants confirmed to the Commissioner that they would also like him to consider RHUL's application of section 14 of the FOIA to the information request.
12. RHUL has confirmed to the Commissioner that it has applied section 14(2) and 14(1) to the first question and section 14(1) only to the second question.
13. The Commissioner considers that the scope of this case is concerned with the question of whether RHUL has breached section 17(7)(a) of the FOIA and whether it is correct to apply section 14(1) and 14(2) to this information request.

## **Reasons for decision**

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### **GWG's review of requests**

14. The complainants have explained that the University and College Union (the "UCU") is the trade union for the academic staff at RHUL. The GWG represents this group and has submitted a number of FOIA requests, requests for clarification and requests for internal reviews to the College. These have been concerned with the composition of RHUL's Academic Board and minutes of meetings.
15. The complainants have explained that the Academic Board is the ultimate legal basis of any decision about the academic work of RHUL and the only superior body to the Academic Board is the College Council. The composition of the membership of the Academic Board is required to conform to the College Statutes by an Act of Parliament.
16. The complainants have explained that there is a College Statute which specifies there should be eleven academic staff members on the Academic Board (Statute 16). They have argued that in early 2013 there were only seven elected academic staff members on the Academic Board. In March 2013 (at the time of the March Academic Board Meeting) they therefore submitted an FOIA request for information held about the compliance of the Academic Board with Statute 16.

17. The complainants have argued that their correspondence with RHUL arises from four requests it has submitted:
    - 19 March 2013 request about compliance with statute 16
    - 27 May 2013 request about Academic Board Paper AB/13/21
    - 27 May 2013 internal review request about Academic Board Minutes
    - 3 September 2013 request about legal advice concerning Academic Board.
  18. The complainants have explained that they did not consider that RHUL's response to their request of 19 March 2013 answered the request. They asked for an internal review and this was provided. They then requested clarification of some terms used in the review and on 15 June 2013 asked for an internal review of the matter. RHUL refused to perform a further internal review and suggested the request for clarification would be handled in an informal manner. The complainants have explained this has still not been provided.
  19. The complainants have explained that on 29 May 2013 the College Secretary submitted a proposal concerning the membership of the Academic Board to the May Academic Board Meeting. On 27 May 2013 the complainants therefore submitted two further requests concerning this matter: one for instructions issued to the College Secretary and one for information about the compliance of the proposal with Statute 16.
  20. The complainants have explained that RHUL does not publish the minutes of its Academic Board Meetings (contrary to a Definition Document which states they should be published for the last three years). Therefore they submitted a further request for an internal review of the policy of not publishing the Academic Board minutes. This was refused.
  21. The current request for legal advice was submitted on 3 September 2013 following the appointment of six elected places for academic staff on the Academic Board in July. The complainants consider that to be compliant with Statute 16, a further two places should have been filled by academic staff. They argue that the June minutes of the College Council suggest that RHUL intended to take legal advice concerning the composition of its Academic Board.
- RHUL's review of requests**
22. RHUL has argued that the requesters are a group of anonymous individuals acting under the banner of the local UCU. They have placed a

series of requests as part of a campaign against the College which has involved 14 requests concerning the Academic Board between March and September 2013 (plus other correspondence asking for reviews and seeking further information or clarification).

23. In addition, RHUL has provided figures which show that in total between March and June 2013, of the 58 formal FOIA communications it received which required a response, the complainants alone were responsible for 30 of those communications (requests for information, for clarification or for an internal review). To indicate the significance of this burden, it has explained that the equivalent number for the same period in 2012 was 26 in total.
24. RHUL has argued that many of the requests are not asking for new information and their sole aim appears to be to engage staff in prolonged argument and debate.

#### **Section 14(2) of the FOIA**

25. RHUL has confirmed to the Commissioner that it applied section 14(2) to question 1 of the request of 3 September 2013 but that if this was not engaged, it considered section 14(1) applied.
26. Section 14(2) of the FOIA states that where a public authority has previously complied with a request for information, it is not obliged to comply with a subsequent identical or substantially similar request unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
27. RHUL has argued that question 1 of the request is substantially similar to a previous request by the same group. This previous request was made on 27 May 2013 and asked for:  
  
*"information about the instructions issued to the College Secretary by the Council itself in relation to the composition of the Academic Board."*
28. On 20 June 2013 the College explained that it did not hold the requested information.
29. On 3 September 2013, question 1 of this current request asked for:  
  
*"Information held by Royal Holloway concerning instructions issued to the College Secretary's Office by the College Council (since September 2012) to seek external qualified legal advice about the composition of the Academic Board."*

30. RHUL has confirmed that no information was held in June 2013 and has explained to the Commissioner that it was reasonable to assume that the requesters were aware that no Committee had been held or business conducted between July and October.
31. However the complainants have argued the response to their first request of 27 May 2013 was provided on 20 June 2013 but the minutes of the Council Meeting of 26 June 2013 suggested that further legal advice would be taken. This implies that the information held by RHUL would have changed between the two requests.
32. The relevant minutes of 26 June 2013 state that the council would consider "*further advice on how to take issues regarding membership of Academic Board forward*". The Commissioner considers that although this does not necessarily suggest legal advice, it does imply the existence of advice which may not have been held at the time of the first request (27 May 2013).
33. The complainants have also argued that the first request did not specify they required legal advice and therefore that the requests are different. However the Commissioner is satisfied that the first request would have included any legal advice held on this matter. He does not consider that the requests are substantially different.
34. The Commissioner therefore considers that RHUL is not correct to apply section 14(2) to question 1 of the request of 3 September 2013. Although the requests are substantially similar, he considers it is reasonable for the complainants to assume some advice may have been taken after the meeting of 26 June 2013. The circumstances behind the request had therefore changed.
35. As the Commissioner does not accept that section 14(2) of the FOIA applies to this part of the request, he has therefore considered whether section 14(1) applies to the whole request.

### **Section 14(1) of the FOIA**

36. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

37. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.<sup>1</sup> The Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "*...manifestly unjustified, inappropriate or improper use of a formal procedure*" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
38. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) the harassment or distress caused to staff. 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).
39. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
40. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests.<sup>2</sup> 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013)

<sup>2</sup> [http://www.ico.org.uk/~/media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

41. RHUL has argued that the requests have had a disproportionate impact which has had a detrimental effect upon the College's ability either to answer legitimate FOIA requests or to perform other mainstream services. It has explained that multiple requests for information, for reviews and for reviews of reviews represent a drain on time, energy and finances which has negatively affected both individual members of staff and the normal functioning of the Secretariat. It does not consider that this is a justified burden.
42. RHUL considers that the pattern of behaviour suggests that each response is likely to lead to further questions and requests.
43. RHUL has therefore argued that one member of staff alone has spent 156 hours since March 2013 responding specifically to this requester which is equivalent to 4.45 weeks FTE or 30% of their time. It has explained that at the beginning of 2013 the College dedicated the equivalent of 0.6 of a post dealing with FOIA requests. At the campaign peak 1.4 staff were working on FOIA requests.
44. It has argued that this has placed a significant pressure upon its staff and has the effect of harassing the staff, particularly as the requests are so frequent and overlapping and followed by reminder emails. The complainants have been informed of the effect of their requests but this has not altered their behaviour.
45. In addition, RHUL has argued that the complainants have been repeatedly lobbying Governing Body members (both in person at meetings of the governing body and by post direct to members' personal addresses) and have set up a campaign website. It has argued that it has been reported the campaigners are intent upon 'getting to' senior managers and interrupting work and Committees.
46. RHUL has argued that the complainants have demonstrated an unreasonable persistence and that asking for reviews of internal reviews or repeated follow-up questions asking for interpretation rather than information has the effect of disrupting processes and increasing pressure upon the staff. Furthermore, RHUL considers that internal reviews are requested because they are the only mechanism in the FOIA process which involves the Senior Management Team. It has explained that the complainants have been informed that it is inappropriate to directly ask the Council chair to conduct a review.
47. RHUL has explained that the group has refused two invitations to discuss what information the College publishes about governance matters and argue that this reflects its refusal to engage constructively and to provide input into, for example, the review of the Publication Scheme.



48. The complainants have argued that it is not in itself vexatious to request internal reviews and clarifications and that RHUL itself does not directly address the quality of its reviews or clarifications.
49. For example, the complainants have argued that RHUL should have disclosed a Stakeholder Consultation document concerning Statute 16 in response to its request of 19 March 2013 but did not disclose this document until it responded to a later request.
50. The Commissioner has not considered the information provided by RHUL to the request of 19 March 2013 as part of this case. However he notes the wider point that the complainants do not consider RHUL provides comprehensive responses to their requests.
51. Finally, the complainants have argued that the request has a serious purpose as it concerns the compliance of RHUL with its Statutes and therefore with an Act of Parliament. They have argued that the composition of the Academic Board still does not comply with Statute 16 and that the issue is still on-going.

## **Conclusions**

52. The Commissioner has considered RHUL's log of FOIA requests made by the complainants between March and September 2013 and is satisfied that this volume of correspondence would impose a disproportionate burden on College staff.
53. The Commissioner appreciates that the complainants consider the request has a serious purpose. However he does not consider that this warrants the submission of multiple requests for information and internal reviews. He is satisfied that each response leads to further correspondence and considers that this volume is disproportionate and likely to cause an unjustified level of disruption.
54. In isolation, the four requests identified by the complainants may be valid and appropriate requests under the FOIA. However they do not provide a complete picture of the total correspondence sent to RHUL on this matter. The Commissioner is therefore satisfied that the total amount of correspondence constitutes a burden upon the small department and is likely to cause distress.
55. Furthermore, the Commissioner does not consider that the FOIA is the correct mechanism to question the composition of the Academic Board at RHUL. He therefore considers the volume of FOIA correspondence submitted to RHUL between March and September 2013 to be a misuse of the FOIA.

56. The Commissioner also notes that the complainants have refused two invitations to discuss what information the College publishes about governance matters. This would appear to be the correct forum to discuss such matters. It is not appropriate to use the FOIA to put pressure upon an organisation.
57. For the above reasons, the Commissioner is satisfied that RHUL is correct to refuse this request under section 14(1) of the FOIA.

### **Particulars of the internal review procedure**

58. Section 17(7)(a) states that a refusal notice must contain particulars of any procedure provided by the public authority for dealing with complainants about the handling of requests for information or state that the authority does not provide such a procedure.
59. In its refusal notice, RHUL informed the complainants that because of the background to this request it had decided to apply section 14 of the FOIA and did not consider it was appropriate to offer an internal review.
60. The complainants informed RHUL that they did not consider the refusal notice to be 'legally valid' and asked it to respond again with a valid refusal notice.
61. RHUL explained that it accepted it is best practice to offer an internal review. However it explained that the complainants' pattern of behaviour has placed considerable strain on the Secretariat staff who deal with FOIA requests and the refusal of an internal review was an attempt to stop this intensive use of scarce resources at the university.
62. Section 17(7)(a) of the FOIA states that if a public authority has an internal review procedure, it has an obligation to tell the complainant how this can be accessed. However the FOIA does not compel a public authority to conduct an internal review, even if such a review procedure exists. In its refusal notice, RHUL did inform the complainants that it would not conduct an internal review. The Commissioner is therefore satisfied that RHUL did not breach section 17(7)(a) in this instance.

### **Other matters**

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63. The Section 45 Code of Practice recommends that a public authority should have an internal review procedure in place and the Commissioner considers it to be good practice to offer one.

64. The Commissioner notes that the internal review procedure is a public authority's second and final attempt to review its response to a request for information. It is not intended to allow a complainant to request further reviews or to request clarification.
65. Following this complaint, RHUL has now reviewed its internal review procedure and formalised its approach to include clarification that it will not offer a formal review where there are strong public interest considerations to suggest that such a review is not warranted.
66. The Commissioner appreciates that in instances where a public authority is overstretched, it may wish to waive the right to an internal review in cases where the request is considered to be vexatious and where there is a background of what is perceived to be burdensome correspondence. However he would question whether it was in the spirit of the Section 45 Code of Practice to apply public interest considerations in deciding whether to conduct an internal review.

## Right of appeal

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67. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

68. 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.

69. 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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