

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

### **Decision notice**

**Date:** 22 April 2014

**Public Authority:** The Governing Body of Manchester Metropolitan University

**Address:** All Saints Building  
All Saints  
Manchester  
M15 6BH

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

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1. The complainant has requested various information on the arguments put forward by Manchester Metropolitan University in relation to its application of section 36(2)(c) of the FOIA to another request that were summarised by the Commissioner in his Decision Notice FS50318502 dated 26 May 2011.
2. The Commissioner's decision is that Manchester Metropolitan University has correctly applied section 14(1) of the FOIA.
3. The Commissioner therefore does not require Manchester Metropolitan University to take any steps to ensure compliance with the legislation.

#### **Background and previous requests**

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4. The complainant runs a website about UK called [www.AcademicFOI.com](http://www.AcademicFOI.com) which 'aims to investigate UK universities and higher education institutions through the use of Freedom of Information requests'.
5. On 26 April 2010 the complainant made a request to Manchester Metropolitan University (the University) under the FOIA for all the work email addresses of its staff. The University initially withheld the information under sections 21(1) and 40(2) of the FOIA but after the matter was referred to the Commissioner for investigation it applied section 36(2)(c). The Commissioner subsequently upheld its application of section 36(2)(c) in a Decision Notice (FS50318502) dated 26 May 2011. The complainant did not appeal this decision as he wanted to minimise the strain on public resources.

6. However, he did appeal another Decision Notice (FS50344341) dated 14 February 2011 involving an identical request to another university (Sheffield Hallam) where the Commissioner also upheld the public authority's application of section 36(2)(c) to prevent disclosure.
7. The complainant's appeal of this Decision Notice (under reference EA/2011/0061) was dismissed by the First Tier Tribunal (Information Rights) (*the Information Tribunal*) and the Commissioner's decision was upheld for the reasons set out in its decision dated 6 October 2011.<sup>1</sup>
8. The complainant subsequently applied for and was granted permission to appeal this decision to the Upper Tribunal in a decision dated 10 December 2012 under reference GIA/3085/2011. This appeal was allowed and the judgement handed down on 11 December 2013 was to set the First Tier Tribunal's original decision aside and refer the case back to a differently constituted tribunal. This appeal was subsequently withdrawn by the complainant in or about January 2014 before any hearing had taken place.
9. On 15 April 2012 the complainant repeated his request to Manchester Metropolitan University for the work email addresses of its staff. The University withheld the information under section 36(2)(c) of the FOIA and the Commissioner upheld its application of this exemption in his Decision Notice (FS50458515) dated 21 January 2013.
10. The complainant appealed this Decision Notice (FS50458515) to the Information Tribunal under reference EA/2013/0030 in February but subsequently withdrew it (together with 4 similar appeals) in June 2013.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/\[2011\] UKFTT EA20110061 \(GRC\) 2011-10-06.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/[2011] UKFTT EA20110061 (GRC) 2011-10-06.pdf)

## Request and response

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11. On 5 August 2012 the complainant wrote to the University and requested information in the following terms:

*"I have extracted the following statements from ICO Decision Notice FS50318502"*

'The University's primary function is to provide education and to conduct research. Email is crucial and underpins the University's core business. It is used by all administrative, managerial and academic staff, and is key to certain correspondence. Key services depend on email. The disclosure of the full email list would risk the interruption of its business.

Disruption to the University's email service, especially at key times in the academic year would be very difficult to manage. For example, the clearing process is highly dependent on email and disruption of the system would lead to students not being able to know if they are admitted. Alternatively, emails are necessary for students to contact staff about revised deadlines in times of strife.'

*"Over the last 4 years has your e-mail system ever been interrupted? If so, what happened?"*

'Emails that are part of the University's core business are directed to the correct place through the correct channels. This ensures that they are dealt with by the right people with the right experience. It explained the list would enable any member of the public to simultaneously email every member of staff irrespective of who is responsible for the work. It said that this would lead to stress and a cost in working time that could be unlimited.'

*"Over the last 4 years have any e-mails been incorrectly directed within your university? If so, what happened?"*

'It explained its staff were entitled to opt out of the contact directory and it felt that the disclosure would have two adverse effects – it would undermine the University's relationship with the individuals who have reasonable expectations that their names will not be in the public domain and secondly may lead to more individuals opting out of the contact directory leading to it being a less useful resource for both the public and other members of staff.'

*"Over the last 4 years approximately how many staff have opted out of the contact directory?"*

'The consequential need to update further its security system. It currently discloses the email addresses it feels are required into the public domain and holds the others back for security reasons. The disclosure of the others would remove this protection and it would have to reconfigure its system taking time and money. It explained that it would be likely to need to tighten its firewalls and this strengthening would increase the risk that legitimate emails get branded as SPAM and not considered by the right person'.

"Over the last 4 years has any such reconfiguration of your systems taken place? If so, what happened?"

'In addition, there is also a risk that spammers would be able to use those email addresses to create legitimate looking addresses and it could lead to the University's genuine email addresses being blocked by external bodies, therefore adversely affecting how it operates as a business.

The University has a legitimate interest in ensuring that all University communications are genuine and the reputation of the University is not damaged by fraudulent mailings.'

*"Over the last 4 years have any e-mails been sent out by third parties pretending to be from your university? If so, what happened?"*

'This is because he is satisfied that in the particular circumstances of this case it was reasonable for the Qualified Person to conclude that the disclosure of the withheld information to the public would be likely to cause an adverse effect to the University's ability to carry out its core functions (providing education and conducting research).'

*"Over the last 4 years has any such adverse effect on the core functions of your university been experienced? If so, what happened?"*

'The University has an interest in protecting its reputation by delivering consistent messages regarding procurement. It does so by routing enquiries through agreed channels and the disclosure of the list may lead to those channels being subverted.'

"Over the last 4 years has there been any subversion of your university procurement channels? If so, what happened?"

'The University has shown the Commissioner that this has the potential to lead to many more unsolicited marketing messages, more SPAM and disruption to its staff. It is in the public interest for the University to protect its staff from being bombarded or targeted by external contacts (particularly the more junior staff) and from them being sent irrelevant

and unwanted emails as this can cause disruption to staff, confusion and distress’.

*"Over the last 4 years has any research or investigation been carried out at your university into the extent of staff disruption, confusion and distress resulting from unwanted emails? If so, what were the results?"*

‘It explained that it already supports openness, scrutiny and accountability by: Educating its staff and providing a strong amount of awareness about the Act and what can be found on the publication scheme; Having a culture of openness and proactively provides management information to its staff; and Having separate facilities to enable staff to raise issues anonymously – through its staff survey and through its public interest disclosure procedures.’

*"Over the last 4 years has any independent research or investigation been carried out at your university that would support these statements? If so, what were the results?"*

12. The University responded on 4 September 2012 and stated it was refusing the complainant’s request on the basis that it was vexatious under section 14(1) of the FOIA. It said that the reasons for this were outlined in its correspondence concerning his previous request dated 15 April 2012<sup>2</sup> for the work place email addresses of its staff when it cited the exemptions in sections 14(1), 14(2) and 36(2)(c) of the FOIA. This correspondence is summarised in the Commissioner’s Decision Notice FSFS50458515 dated 21 January 2013 at paragraphs 5 to 8.
13. The University went on to state that it was not going to offer the complainant an internal review as the matter had already been fully considered with two section 14(1) refusal notices issued on the subject of requests relating to all staff email addresses.

## **Scope of the case**

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14. The complainant contacted the Commissioner in February, September and October 2013 to complain about the way his request for information had been handled.

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<sup>2</sup> FS50458515

## Chronology

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15. On 26 September 2013 the Commissioner contacted the University to request further information relating to the complainant's request including details of the staff email addresses already available for viewing via its website.
16. On 8 October 2013 the Commissioner spoke to the University over the telephone. It pointed out that it was already possible to search for the email addresses (and phone numbers) for over 50% of its staff via its online '[Staff Directory](#)'<sup>3</sup> and added that it was planned to extend this in the future.
17. With regard to the actual information requested, the University said in an email to the Commissioner dated 20 December 2013 that although it probably held some of it in a recorded format it added that the time taken to identify, locate and extract it would probably exceed the prescribed limit of 18 hours under The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. For example, in relation to question 2 of the complainant's request, the University said it would not be possible to provide an accurate or comprehensive answer and that any attempt to identify, retrieve and calculate the requested information would involve searching approximately 5,000 staff emails addresses going back 4 years which it estimated would take almost 5,000 minutes (or 83 hours and 20 minutes).
18. The University said that it based its above view on the following factors;
  - It does not routinely monitor and record instances of emails 'incorrectly directed' (emails regarding matters which fall outside of the individual's work role/responsibilities) to staff. Such information is not, therefore, systematically filed or easily identifiable.
  - There is no automated search facility within its IT/email system capable of identifying email content which falls outside of a recipient's usual work responsibilities. Therefore, the only way to conduct a search would be to ask all staff to conduct individual searches of their own work email accounts.

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<sup>3</sup> <http://www.mmu.ac.uk/staff/directory/>

- There are no key-words which would enable staff to search and identify emails in their account containing matters which fall outside of their usual work responsibilities. Therefore, the only way of attempting to identify such emails would be for staff to read through each of the emails held in their account.
- At the time of the complainant's request, the University had just short of 5,000 staff (headcount of 4937 in June 2012, calculated for the purpose of answering another FOI request).
- Under The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, 18 hours = 1080 minutes.
- Even if all 4,937 staff spent only one minute each:
  - reading an email from the Legal Department asking them to identify, retrieve, collate and report this data;
  - search their email account (by reading through their emails, as described above), and
  - writing a response to confirm the outcome of their search and the actions taken in respect of the emails identified,
- this would amount to 4,937 minutes, which is far in excess of the 1,080 minute/18 hour limit under The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The University said it considers that one minute of time per member of staff is a very conservative estimate in this case, and the likelihood is that it would take far longer. Furthermore, this does not include the additional time that would need to be spent centrally, collating all the responses from all 4,937 staff, and summarising in a report or copying the responses for the requester.
- Finally, even if such an exercise were to be completed, the University said it believes the results would be likely to be inaccurate/incomplete: It is likely that emails which fall outside of an individual's normal area of work are those least likely to be retained by the individual long term and the evidence may, therefore, no longer exist even though staff may recall having previously received emails which would have been more appropriately directed elsewhere.

## Reasons for decision

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### Section 14 – Vexatious Requests

19. Section 14 (1) of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
20. The term “vexatious” is not defined within FOIA. However, it has been considered in the recent case of *The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)*<sup>4</sup> which concluded that the term could be defined as “manifestly unjustified, inappropriate or improper use of a formal procedure”.
21. The *Dransfield* case identified four factors that are likely to be present in vexatious requests, although it did note that this list is not intended to be exhaustive or a formulaic checklist:
  - 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
22. The Tribunal urged that anyone considering whether a request could be considered vexatious should take a broad “holistic” approach to consider any other factors that are relevant to the request. It also confirmed that a single factor could be appropriate to refuse a request if the weight of evidence for it was sufficient.
23. In its responses to the complainant the University applied factors very similar to those listed above in order to illustrate why it felt it was correct to refuse the request as vexatious.

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<sup>4</sup> <http://www.osscsc.gov.uk/Aspx/view.aspx?id=3680>  
[http://www.osscsc.gov.uk/judgmentfiles/j3680/\[2013\]%20AACR%2028ws.doc](http://www.osscsc.gov.uk/judgmentfiles/j3680/[2013]%20AACR%2028ws.doc)



## **Burden imposed by request**

24. The Commissioner's guidance states that: "a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example would be an individual placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden."
25. The guidance also states that a requester's past pattern of behaviour may also be a relevant consideration. For instance, if an authority's experience of dealing with his previous requests suggests that he is unlikely to be satisfied with any response and will submit further follow-up correspondence, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority. The Commissioner has weighed the evidence put forward by the University in this case against his guidance.
26. The request being investigated by the Commissioner in the current case is the third one submitted to the University since April 2010 in relation to the work email addresses of its staff. The first two requests dated 26 April 2010 and 15 April 2012 were identical and the third and current one dated 5 August 2012 was in relation to the University's response to the first one.
27. The first request resulted in a Decision Notice being issued by the Commissioner on 26 May 2011 under reference FS50318502 upholding the University's application of section 36(2)(c) of the FOIA. This was not subject to any appeal.
28. The second identical request resulted in a further Decision Notice being issued by the Commissioner on 21 January 2013 under reference FS50458515 which also upheld the University's application of section 36(2)(c) of the FOIA. The complainant appealed this decision to the Information Tribunal under reference EA/2013/0030 but subsequently withdrew it (together with 4 other identical requests to different universities) before it was heard and adjudicated upon.
29. The third request seeks to address issues relating to the University's decision to apply section 36(2)(c) in respect of the first request that might reasonably have been dealt with by way of an appeal to the Information Tribunal.
30. The complainant has pointed out in his email to the Commissioner dated 9 October 2013 that the purpose of his current request is to see whether the University's arguments in respect of its application of section 36(2)(c) of the FOIA to his first request dated 26 April 2010 'withstand

scrutiny'. If they do not, he has said that he would use them as the basis of a future challenge through a fresh FOI request which he said he believed would be a legitimate use of the FOIA.

31. The University has pointed out that if the complainant was unhappy with its response to his first request, which was upheld by the Commissioner's Decision Notice, he should have appealed to the Information Tribunal in May/June 2011 and not have waited until August 2012 to submit a new request. Furthermore, it has pointed out that its arguments in respect of its application of section 36(2)(c) of the FOIA in relation to his second identical request were upheld by the Commissioner in his Decision Notice but that the appeal to the Information Tribunal was subsequently withdrawn.
32. As stated above, in relation to the third request, the University has advised the Commissioner that while some of the information is probably held, the time taken to identify, locate and extract it would probably exceed the prescribed limit of 18 hours under The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. For example, in relation to question 2 of the complainant's request, the University estimated it would take almost 5,000 minutes (or 83 hours 20 minutes) to provide an answer.
33. The University therefore considers that it would place an unnecessary burden on its resources by responding to his third request in terms of the time and expense in identifying, locating and extracting the relevant information.
34. The Commissioner considers that the number of similar requests made to the University and the time taken to respond to the current one can be viewed as an unjustified burden.
35. The Commissioner has also taken into account the complainant's comments that if he is unhappy with the response to his current and third request regarding the application of section 36(2)(c) of the FOIA he will submit a fresh request. This will obviously place a further burden on the University.

### **Motive of the requestor**

36. The complainant has made it clear in his correspondence with the Commissioner that his motive for requesting the information in this case is to 'explore the factual background' to the arguments advanced by the University in support of its application of section 36(2)(c) of the FOIA in response to his previous request dated 26 April 2010 that was upheld by the Commissioner in his Decision Notice FS50318502 dated 26 May 2011. In particular, he said that he wanted examine whether the

University's arguments for refusal withstood scrutiny. If they did not, he said that he would propose to use them as the basis of a future challenge through a fresh information request which he believed would be a legitimate use of the FOIA.

37. The complainant has stated his belief that the University did not (as far as he was aware) provide any evidence to substantiate its arguments and the Commissioner accepted these without any investigation.
38. The complainant has stated that there is nothing within the rules preventing a requestor turning down the opportunity to appeal a Decision Notice issued by the Commissioner to the Information Tribunal, researching fresh evidence and then submitting a new request for the same information supported by that fresh evidence. The complainant has suggested that submitting a fresh request is a much quicker process that imposes less of a burden on the public authority and no burden on the Information Commissioner's Office or the Information Tribunal.
39. The complainant has stated that to minimise the strain on public resources he did not challenge the Commissioner's Decision Notice FS50318502 by lodging an appeal with the Information Tribunal. Instead he appealed a very similar decision made by the Commissioner concerning Sheffield Hallam University under references FS50344341, EA/2011/0061 and GIA/3085/2011.
40. The complainant did however appeal a subsequent decision made by the University for an identical request dated 15 April 2012 which was refused under section 36(2)(c) of the FOIA. This refusal was upheld by the Commissioner in his Decision Notice FS50458515 and the subsequent appeal made to the Information Tribunal under reference EA/2013/0030 was withdrawn by the complainant.
41. It is clear to the Commissioner that the motive of the complainant is undermine the University's position in relation to its application of section 36(2)(c) of the FOIA by raising questions in a new information request which should properly have been placed before the Information Tribunal following the issue of the first Decision Notice. Furthermore, the Commissioner has noted the complainant's intention to issue a fresh information request if he is dissatisfied with the University's response to the present one in terms of the evidence to support its section 36(2)(c) arguments.

#### **Harassment or distress to staff**

42. The University has not advanced any specific arguments to suggest that the complainant's request has caused distress to members of its staff. However, it has indicated that if it was to deal with his third and latest

request this would no doubt lead to further correspondence, complaints or requests which given the wider context and history would be perceived by the University to be harassing.

### **Value or serious purpose of request**

43. The University has argued that the complainant's request lacks serious purpose and value due to a number of reasons.
44. Firstly, it is an attempt to reopen matters which should have been raised in an appeal to the Information Tribunal following the issue of the Commissioner's Decision Notice on 26 May 2011 under reference FS50318502.
45. Secondly, the University believes that the complainant's request lacks serious value or purpose because it is an attempt to reopen matters which have already been considered by the Commissioner and the Information Tribunal. In relation to the University, these matters have been dealt with by the Commissioner in his Decision Notices FS50318502 and FS50458515 and by the Information Tribunal in the appeal EA/2013/0030. The University is also aware that the same or similar issues raised by the complainant with other universities have also been dealt with by the Commissioner and the Information Tribunal.
46. Thirdly, the University has argued that the complainant's request lacks serious purpose or value because he has indicated in the past that he does not accept its views and arguments and those expressed by the Commissioner. For example, in his email to the University dated 14 May 2012 he stated;  
  
*"I have read every Section 14 decision on the ICO website over the last 2 years. I am entirely familiar with how the ICO go about assessing vexatious requests. I disagree with the ICO methodology and therefore the majority of the resulting decisions. I find many of the arguments that the ICO use to be ultra vires, illogical and biased against requesters. I make no secret of my views on this topic and have submitted them to both the UCL Constitution Unit Survey and in a late submission to the Justice Select Committee FOI review."*
47. Fourthly, the University has pointed out that the complainant's request lacks serious purpose or value because he has failed to apply any of his evidence or arguments to those it presented or those made by the Commissioner in his Decision Notices.
48. The Commissioner accepts the arguments put forward by the University as to why the complainant's request lacks value and significant purpose.

## **Conclusion**

49. After considering the arguments put forward by both the complainant and the University, together with the context in which the request was made and the evidence supplied, the Commissioner's decision is that the request is clearly vexatious. The request would cause a significant burden upon the University's resources in terms of time and costs to deal with matters which should properly have been dealt with by way of an appeal to the Information Tribunal. Furthermore, the Commissioner has considered the complainant's motive for making the current request and is not persuaded that it has any real value or purpose in the context and history of his dealings with the University in relation to the question of its staffs' email addresses. The Commissioner believes it is reasonable for the University to take steps to limit the amount of resources it spends on the complainant's requests. He therefore finds that section 14(1) does apply and the University was not obliged to comply with his request.

## Right of appeal

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50. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

51. 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.

52. 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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Information Commissioner's Office  
Wycliffe House  
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