

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

### **Decision notice**

**Date:** 8 September 2014

**Public Authority:** The Office of Qualifications and Examination Regulation

**Address:** Spring Place  
Coventry Business Park  
Herald Avenue  
Coventry  
CV5 6UB

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

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1. The complainant made three requests to the Office of Qualifications and Examination Regulation ("Ofqual") for information in relation to policies and procedures concerning the surrender and cancellation of qualifications and any dictionaries or definitions used to distinguish the word "cancelled" from "invalidated".
2. Ofqual advised the complainant that it would not respond to the requests as they dealt with substantially the same issues as previous requests and correspondence and the issues the requests were related to had been dealt with previously. It stated it considered the requests vexatious under section 14(1) of the FOIA.
3. The Commissioner's decision is that Ofqual has correctly applied section 14(1) to the request. There are no further steps to be taken.

### **Background**

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4. The complainant has consistently sought to communicate with Ofqual about their concerns following a complaint made to Ofqual about Edexcel in 2009. The concerns centred upon the validity of a

qualification obtained by the complainant during former employment with a training company; the advice given to Edexcel by Ofqual about this issue; the actions of removal of the qualification by Edexcel and later reinstatement following further complaints by the complainant to both Ofqual and the Parliamentary Health and Service Ombudsman ("PHSO").

5. Ofqual's investigation of the original complaint about Edexcel was completed in April 2011. The complainant then submitted a complaint to the PHSO about Ofqual's handling of the original complaint to it. The PHSO concluded its investigation in August 2013 when Ofqual accepted the findings of the investigation. This concerned issues about the recording of advice given in relation to the original complaint about Edexcel and issues in relation to the delay in concluding the investigation of the original complaint.
6. The complainant made a series of requests for information to Ofqual in 2011 about these matters. Ofqual responded to these and provided information.
7. Following the conclusion of the PHSO investigation in respect of Ofqual, the complainant submitted a further complaint about the PHSO's handling of the matter. This matter was reviewed using the PHSO's internal complaints procedure which upheld the actions of the PHSO. The report on this investigation was issued in January 2014.
8. At present the complainant is engaged in judicial review proceedings with the PHSO which were issued in April 2014. Ofqual has joined itself as an interested party.
9. Ofqual has been engaged in ongoing correspondence with the complainant since 2009 about the issues raised in relation to the removal and subsequent reinstatement of the complainant's qualification.

## **Request and Response**

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10. On 18 April 2014 the complainant contacted Ofqual and requested information relating to the following:

*"I would like to know if Ofqual has any record of any silent powers for an awarding organisation to cancel an NVQ qualification?"*

*I would like to know how an awarding body should go about cancelling an NVQ qualification if it suspected malpractice?"*

*I would like to know if that is in any way different to how an awarding body should cancel an NVQ qualification if the holder wished to surrender it?*

*I would further like to know what regulatory framework exists to enable a person to surrender an NVQ qualification?*

*I would like Ofqual to explain to me it's understanding of the difference of the words 'cancel', 'invalidate' and 'withdraw' and whether Ofqual considers or has ever considered these terms to be substantially different?"*

11. On 19 April 2014 the complainant submitted a further request for information to Ofqual in the following terms:

*"I understand that Ofqual has a unique definition for the word 'cancelled' with distinguishes it from 'invalidated'.*

*In a letter to [Name redacted] of the Parliamentary Ombudsman dated the 1st of March 2013 [Name redacted] wrote:*

*"It appears that there may have been a different interpretation between Ofqual and the awarding organisation about the use of the term 'cancelled'. Cancelled means that the certificate is cancelled but the qualification remains on the system. Invalidation means that the qualification is removed."*

*I would like to know what other unique terms or examples of Orwellian 'newspeak' Ofqual has also managed to come up with? Is there a dictionary available of these terms? How are these new definitions of words distributed to awarding bodies? How frequently is this dictionary updated? Is it publicly accessible anywhere? Who creates this terminology?"*

12. On 22 April 2014 Ofqual acknowledged receipt of both requests for information.

13. On 30 April 2014 the complainant submitted a further request for information in the following terms:

*"What is Ofqual's policy regarding the surrender of qualifications?"*

*Can a qualification, regulated by Ofqual, be surrendered or is it considered to be permanent?*

*Has a qualification, regulated by Ofqual, ever been surrendered?"*

*What steps does Ofqual take to ensure that if an awarding body reports that an individual wishes to surrender a qualification that the individual:*

*a) Wishes to do this and b) Fully understands the consequences of this action?*

*What steps would Ofqual take if an awarding body made a claim that a qualification was being surrendered when that was not the intent or desire of the holder of that qualification?"*

14. On 20 May 2014 Ofqual provided its response to these three requests. It advised that it considered the requests to involve issues relating to a complaint submitted to Ofqual some time ago and which had been the subject of correspondence and investigation over a considerable period of time.
15. It advised that given the context and history in which the requests for information were made it considered the requests to be "vexatious" under section 14(1) and/or repeated requests under section 14(2). It stated, as part of its response to the complainant, that it considered the requests to be frequent/overlapping, to contain an element of personal comment against the organisation and staff and a level of unreasonable persistence.
16. On the same date the complainant advised Ofqual that they were not satisfied with the responses received to the requests for information and asked for an internal review.
17. On 2 June 2014 the complainant contacted the Information Commissioner's Office ("ICO") in relation to their concerns about the way in which the requests for information had been dealt with. The complainant was advised to await the outcome of the requests for internal review and directed to the Commissioner's guidance.
18. On 3 June 2014 the complainant sent a reminder to Ofqual in respect of the request for internal review of the three requests.
19. On 20 June 2014 the complainant lodged a complaint with the ICO stating that they were not satisfied with the responses received to the requests and advising about the lack of response in respect of the internal review.
20. On 4 July 2014 the complainant sent a further reminder to Ofqual in respect of the requests for internal reviews.
21. On 10 July 2014 Ofqual provided a response to the requests for internal review. It advised that it upheld the position taken in the initial response

dated 20 May 2014 and refused to provide the information requested relying upon its initial response.

## Scope of the case

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22. On 10 July 2014 the complainant confirmed to the ICO that they were not satisfied with the response received to the internal review.
23. Therefore the focus of the Commissioner's investigation has been to determine whether Ofqual's application of section 14 of the FOIA is correct.

## Reasons for decision

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### Section 14(1)

24. Section 14(1) of the FOIA states:

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

25. When considering whether a request is "vexatious" under section 14 of the FOIA the Commissioner is mindful of his published guidance in respect of section 14 of the FOIA<sup>1</sup>. This refers to an Upper Tribunal decision<sup>2</sup> which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
26. This guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history to the request.

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<sup>1</sup>

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

<sup>2</sup> *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

## **Background and history to this request**

27. As part of its arguments to the Commissioner, Ofqual has advised that the complainant has consistently sought to communicate with Ofqual, over a considerable period of time, about the way in which they believe their complaints about the removal/invalidation of and subsequent reinstatement of their NVQ qualification has been dealt with. These communications have consisted of FOIA requests, correspondence about the issues in relation to the subject matter of his complaints and the exhaustion of all internal complaints procedures at Ofqual about this issue.
28. Ofqual has provided the Commissioner with detailed evidence about the history of involvement with the complainant including the level of contact with the complainant, the previous requests for information under FOIA and the behaviour of the complainant in relation to his contact. It is evident that the complainant feels aggrieved by the decisions of authorities in relation to his concerns and has consistently sought to revisit the issues which have already been fully investigated by two separate public bodies.
29. From the information provided the Commissioner notes that three FOIA requests were made in 2011 on 7 February, 29 March and 21 July which concerned issues arising from the complainant's concerns about Ofqual's handling of his complaint about Edexcel. The Commissioner has also been advised that considerable correspondence was also received at the time due to the ongoing complaint which was being investigated by Ofqual.
30. Ofqual has also provided the Commissioner with details of requests made by the complainant or suspected to have been made by the complainant subsequent to the three requests which are the subject of this decision notice. These total five with two received on 20 May 2014, two received on 12 July 2014 and one on 13 July 2014. (suspected pseudonym). All save one deal with details about the surrender of qualifications, the procedures in place for this and staff guidance about the difference in the definition between "cancellation" and "invalidation.
31. Additionally, since the requests of 18, 19 and 30 April 2014, Ofqual has received a considerable volume of correspondence including the FOIA request from another individual which deals with the same issues which concern the complainant. Ofqual has advised the Commissioner that it considers the requests to be under a pseudonym and believes the requests are made by or on behalf of the complainant. The Commissioner has considered the correspondence received and given the nature of the request and style of correspondence would consider that it is reasonable to come to this conclusion. He notes the use of the

email address used to make the requests which includes a reference to and is critical of the PHSO.

32. Ofqual has also provided details as to the involvement of the PHSO in relation to the complaints made and the outcome of the investigations conducted by both authorities. From the evidence provided to the Commissioner it is clear that the complainant has utilised every avenue available to them to review the decision made by Edexcel to remove/invalidate their qualification. This process has taken place over a number of years with requests still being received by Ofqual in relation to the same issues which have been investigated.
33. Ofqual has argued that because of its past experience with the complainant on this issue it is of the opinion that the complainant will never be satisfied with the outcome of any information provided and that they will continually seek to ask questions for the sole purpose of reopening the debate on these issues.
34. The complainant has advised the Commissioner that he does not regard his requests as unreasonable and believes the response of Ofqual is influenced by his past involvement with them. He believes his questions are reasonable and that a refusal to respond is not warranted under section 14.
35. Whilst not particularly onerous in itself these requests form part of a considerable amount of correspondence by or concerning the complainant. The Commissioner is therefore satisfied that, in the context of Ofqual's previous and ongoing dealings with the complainant, compliance with the request would result in a disproportionate burden on the resources of the Council.
36. Page 7 of the Commissioner's guidance, already referred to in paragraph 25 of this decision notice, states that an attempt to reopen issues can be considered an indicator of vexatiousness. Having considered the details of this case, the Commissioner is similarly satisfied that the requests represent an attempt on behalf of the complainant to revisit issues that have already been reviewed and responded to on several occasions by Ofqual and others and that this is an improper use of the FOIA.

### **Serious purpose or value**

37. In its arguments to the Commissioner, Ofqual has detailed the history to the complainant's concerns and the steps taken by both Ofqual and the PHSO to investigate the matters raised and the steps taken as a consequence of the findings of the investigation. This led to the reinstatement of the qualification of the complainant.



38. Ofqual acknowledges that the complainant had a legitimate interest in pursuing a complaints process in respect of his concerns and that as a public body Ofqual is accountable for its actions. However it argues that in this case it has answered a considerable number of queries on essentially the same issues and that the point has been reached where it would be unreasonable to expend any further resources on dealing with further related requests for information.
39. Ofqual is of the view that these requests for information represent unreasonable persistence on the part of the complainant which, whilst important to the complainant, lacks serious value or purpose to the public at large. It is of the view that whilst the complainant does not receive the answers which fit with his view then he will continue to use the FOIA legislation to engage with Ofqual and other public bodies for the purpose of revisiting and reopening these issues and this will place an unreasonable burden on the organisation.
40. From the detailed representations made by the complainant, the Commissioner appreciates that the complainant holds strong views about what he perceives to be the unreasonableness of the use of section 14 of the FOIA in relation to his request. This is evident from the information provided to the Commissioner by the complainant and also from the correspondence provided by Ofqual to the Commissioner as part of the investigation. However, the Commissioner is satisfied, having considered the documentation provided to him, that this issue has been already considered at length by both Ofqual and the PHSO. He also notes that two separate investigations and reports have been produced.
41. It is also clear from the tenor of correspondence from the complainant in relation to both the current and previous requests for information that he will remain dissatisfied with any response he receives from Ofqual.
42. Taking these factors into account and acknowledging that members of the public do have a right to scrutinise the workings and decision making of public bodies, the Commissioner is satisfied that, in these circumstances, the serious purpose and value of the request under consideration has diminished in the light of the background and history to this matter and the considerable resources that have already been utilised in examining the original concerns of the complainant by two independent public bodies.

**Detrimental impact: workload, irritation and distress**

43. Ofqual has provided the Commissioner with an overview of the correspondence received from the complainant. Whilst not as excessive as some situations that the Commissioner has considered in relation to the use of this exemption, the Commissioner notes the threatening and



intimidating tone the complainant has used in some correspondence sent.

44. Ofqual has provided the Commissioner with correspondence sent by the complainant in March and April 2011 following the conclusion of Ofqual's investigation into the original complaint and subsequent to a series of requests made by the complainant in relation to this investigation. This correspondence included threats of suicide and was sent to a named employee.

45. As a result of these threats Ofqual advised the Commissioner that it made the decision to restrict further communication by the complainant because of their unreasonable behaviour. It decided that all communications were to go through the legal department to protect staff from being subjected to unacceptable behaviour. The complainant was advised by a letter dated 5 April 2011 as follows:

*"The emails in question (i.e. dated 31 March, 1 April and 2 April 2011) are extremely unpleasant in respect of their content, tone and nature, They are upsetting and in many respects intimidating for Ofqual staff to receive.*

*It is disappointing to note that you continue to correspond in this manner given that I have previously asked you, in my letter of 7 March 2011, to moderate the tone and content of your communications to, and with, Ofqual staff.....I am left with no option but to put in place systems and procedures to endure that Ofqual personal are not subject to correspondence of this nature going forward."*

46. Ofqual has advised the Commissioner that despite the above restriction the complainant contacted staff members directly and continued to make threats including threats to commit suicide at the offices of Ofqual, naming individual members of staff as being responsible for what had happened.

47. The Commissioner has been provided with the relevant communications and agrees that such communications would have been highly distressing for the recipients and for those members of staff named. The tone of the language used by the complainant could be considered personal and threatening.

48. In relation to the current requests Ofqual has advised the Commissioner of its current concerns about the behaviour of the complainant. The current requests have been put on the website [whatdotheyknow.com](http://whatdotheyknow.com) and have attracted comments with responses by the complainant. The Commissioner has seen evidence of correspondence from Ofqual's legal department to the [whatdotheyknow](http://whatdotheyknow.com) organisation asking for the removal

of defamatory material about an employee placed on the website by the complainant. The Commissioner notes this named individual is also one of those who were named in the 2011 correspondence which made distressing threats.

49. As a consequence of the action taken by the website to remove defamatory material and further evidence provided by Ofqual the complainant would appear to have resorted to Twitter to voice his view on the actions taken. Ofqual has advised the Commissioner that it regards the actions of the complainant as an attempt to reopen the issues considered by the PHSO and Ofqual and that the complainant will not be satisfied with any responses received to his queries whilst he does not receive the answers he agrees with.
50. Ofqual has further argued that the complainant's accusations, both to Ofqual, the PHSO and publicly, involve situations where members of staff have been identified and the nature, content and frequency of the communications has meant the need for such communications to be dealt with at a senior level by senior staff and legal advisors. It contends that this is an inappropriate drain on resources in a relatively small public authority.
51. Whilst the Commissioner accepts that public sector employees should be prepared to accept a level of scrutiny and criticism in their role, having considered the correspondence in this matter the Commissioner considers that in this case the level of directed criticism towards individual employees went well beyond what would be deemed reasonable in the circumstances in relation to the previous requests. The Commissioner is also of the view that given the past history in this matter and the recent actions of the complainant it is reasonable for the authority to anticipate the potential escalation of unreasonable communications by the complainant in relation to the current request.
52. Having considered the volume and nature of the correspondence received, the background history to this matter including the distress caused to the employees concerned, the Commissioner considers that compliance with the requests which are the subject of this decision notice would have a detrimental impact upon Ofqual in terms of workload.
53. Whilst not particularly onerous in themselves the requests are one of several received by Ofqual from the complainant. There is a clear pattern of each response generating an unreasonable response from the complainant with attempts to reopen issues which have been dealt with in depth by two public bodies. Recent requests received illustrate an attempt to reopen the issues in the public domain through the use of

whatdotheyknow, Twitter and Facebook and the possible use of a pseudonym or other third party acting on behalf of the complainant.

54. The Commissioner is therefore satisfied that, in the context of Ofqual's previous dealings with the complainant, compliance with the request would result in a disproportionate burden on the resources of Ofqual now and in the future.
55. The Commissioner is satisfied that Ofqual has evidenced the complainant's general refusal to accept that the issues of concern to him about the removal and reinstatement of his qualification have been thoroughly investigated and that the requests submitted represent an attempt to reopen issues already dealt with. Evidence has also been provided of the disproportionate time that is being spent on dealing with correspondence and requests from the complainant which the Commissioner accepts is detracting resources from other work Ofqual is required to carry out.
56. For this reason the Commissioner is satisfied that responding to the requests is likely to cause an unjustified level of irritation and disturbance to Ofqual and given the previous history of involvement is likely to cause distress to staff given the behaviour the complainant has previously exhibited.
57. Therefore the Commissioner is satisfied that responding to this request is likely to cause a disproportionate burden upon Ofqual.

## **Conclusion**

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58. The Commissioner has considered the arguments put forward by Ofqual and by the complainant in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. The Commissioner has also taken into account wider factors such as the background and history to the request and the nature of the complainant's prior involvement with Ofqual.
59. The Commissioner considers that Ofqual was correct in its approach in these circumstances. Having considered all the evidence provided, the Commissioner is of the view that section 14(1) of the FOIA applies in this case. Therefore Ofqual was not required to comply with these requests. No further action is required on the part of Ofqual.

## Right of Appeal

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60. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [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)

61. 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.
62. 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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