

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2014

Public Authority: The Open University
Address: Walton Hall
Milton Keynes
MK7 6AA

Decision (including any steps ordered)

1. The complainant has requested information concerning the contract between the North East Surrey College of Technology ("NESCOT") and the Open University Validation Services (the "OUVS"). This is part of a wider request made to the Open University (the "OU") concerned with the validity of the degree certificate the complainant was awarded by NESCOT for a course which finished in 2003.
2. The OU refused the request under section 14(1) of the FOIA. The Commissioner's decision is that the OU is correct to apply section 14(1) to this request. No steps are required.

Background

3. In 2003 the complainant was a student at NESCOT studying on a degree programme. This was a programme validated by the Open University as NESCOT did not have degree-awarding powers itself.
4. The complainant did not complete the College based modules necessary for the award of her degree on completion of her studies in 2003. She then appealed against the result awarded to her.

5. In March 2004, having exhausted NESCOT's appeal process, the complainant then took her appeal to the OUVS in October 2006.
6. The OUVS investigated the matter and the complainant was informed on 22 May 2007 that her appeal could not be upheld.
7. The complainant referred the matter to the Office of the Independent Adjudicator for Higher Education (the "OIA"). In July 2007, the OIA informed the complainant that her complaint could not be considered under the Scheme Rules.
8. In 2009 NESCOT offered the complainant the possibility of completion via the Accredited Prior Learning process. This involved the accreditation of prior qualifications gained by the complainant to provide the necessary credits to enable the awarding of the degree to her.
9. As a result in February 2010, the complainant was awarded her degree with third class honours. A certificate was issued in late February 2010.
10. Since that date, the complainant has written to the OUVS on several occasions stating that she believed that the degree certificate was a forgery. The OU considers the degree to be genuine.
11. Further correspondence was sent to the OU on this matter by the complainant, her solicitors and her MP in March 2010, May 2010, October 2010 and January 2011.
12. On 27 October 2011 the complainant made a subject access request ("SAR") to the OU. This included questions about the relationship between the OUVS and NESCOT. The OU informed the complainant that a fee was due and sent her a copy of the Validation Handbook to answer the request for information.
13. The complainant submitted her fee with a further description of the information she required. The complainant's personal data was provided on 7 December 2011.
14. The OU is satisfied that it responded in full to the complainant's letter of 27 October 2011. However the complainant has continued to contact it about the outcome of her complaint.
15. In April and June 2012 further correspondence from the complainant was received by the OU.

16. In September 2012 the complainant submitted a complaint to the OU under its whistleblowing procedures and this was investigated by the Vice-Chancellor's Delegate. During this investigation nine pages of further documents containing personal information held in an unstructured file were located. These were sent on to the complainant.
17. A further letter from the complainant was received by the OU in October 2013.

Request and response

18. On 4 March 2014 the complainant telephoned the OU's Freedom of Information Office to request a copy of the contract between NESCOL and the OU.
19. Further to this verbal request, on 6 March 2014 the OU wrote to the complainant and refused the request under section 14 of the FOIA.
20. On 6 March 2014 the complainant wrote to the Director of Legislation and Information at the OU and outlined the information she required. She argued this was a repeat of information requested in 27 April 2012 via her solicitor. She requested:
 - information relating to the procedures followed by OU dating from 2004-2013;
 - all the letters from *[name 1 redacted]* to *[name 2 redacted]* MP;
 - all documents from OU investigations into her case;
 - the contract details of joint ventures between the OU Validation Services and the North East Surrey College of Technology (NESCOL); and
 - the documented record of student registration for the OU Validation Services award by NESCOL on the BSc (Hons) in Business Management and Information Technology programme 2002-2003.
21. On 4 April 2014 the OU wrote to the complainant and explained that in 2011 and 2012 it had provided her with all the information it held about her and to which she is entitled under the Data Protection Act 1998 (the "DPA"). It confirmed that it would not be providing her with any further non-personal information for the reasons outlined in the letter of 6 March 2014. The OU therefore confirmed that it was applying section 14 to that part of the above request which falls under the FOIA.

Scope of the case

22. The complainant contacted the Commissioner in May 2014 to complain about the way her request for information had been handled.
23. That part of the above request which falls under the DPA was considered as part of case reference RFA0547176.
24. The Commissioner considers this case to be concerned with the application of section 14 to that part of the above request which falls under the FOIA.

Reasons for decision

25. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
26. The Commissioner's guidance, published in May 2013, refers to an Upper Tribunal decision that establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
27. The guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause 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.
28. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that these are of particular significance in this case.
29. The Commissioner has therefore taken into account factors such as unreasonable persistence, abusive or aggressive language and the question of the purpose and value of the request.

Unreasonable persistence

30. The OU has explained that it has expended disproportionate amount of time on the complainant's case since 2006. The complainant refuses to accept that her degree certificate is not a forgery and has referred the matter to the OIA and to her MP. She has also invoked the whistleblowing procedures at the OU.

31. The OU has argued that the complainant's continuing insistence on pursuing the matter of the validity of her degree certificate demonstrates a pattern of obsessive behaviour and unreasonable persistence.

Abusive or aggressive language

32. The OU has argued that the complainant becomes highly emotional on the telephone and has used extremely derogatory terms when referring to senior officers of the University. The OU has argued that her correspondence has sometimes been difficult to understand, aggressive in tone and obsessive in nature. It considers that the University staff should not have to read or listen to such unreasonable unfounded and derogatory remarks about senior officers and the institution.

Purpose and value of the request

33. The OU has argued that the issue at hand is a personal matter which affects the requester as an individual and is not of interest to the wider public. The awarding of the complainant's degree results, the validity of the certificate provided and the transcript of marks obtained are matters of interest only to the complainant and are not of interest to the public. The OU has argued that the Commissioner has demonstrated that this lack of a wider public interest should be taken into account in previous cases (FS50523251 and FS50523254).

34. The OU has argued that a member of the public requiring the current agreement and responsibilities of institutions with awards validated by the OU can view the Validation Handbook on the University's website at:

<http://www.open.ac.uk/about/validate/about-ouvs/ou-handbook-validated-awards>

35. It has argued that the complainant is attempting to reopen a case which has been thoroughly investigated and concluded. The requested information would not be useful to her. She has already been sent a copy of the Handbook which sets out the responsibilities of institutions.

Conclusion

36. The Commissioner is satisfied that the wider context and history to this request shows a longstanding issue which has been thoroughly investigated on more than one occasion.
37. He is also satisfied that this request is a continuation of an obsessive campaign and that provision of the requested information will not resolve the issue of the complainant's dissatisfaction with her degree.

38. The Commissioner is satisfied that complying with the request is likely to have a detrimental effect upon OU staff as it is likely to lead to further communication from the complainant which may continue to be aggressive and angry.
39. He has therefore decided that this request can be considered as vexatious and that the OU is correct to apply section 14 in this case.

Right of appeal

40. 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: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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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