

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2017

Public Authority: Kings College, Cambridge
Address: King's Parade
Cambridge
CB2 1ST

Decision (including any steps ordered)

1. The complainant made a request for information relating to sexual harassment. Kings College, Cambridge (the College) refused the request as vexatious under sections 14(1) and 14(2) of the FOIA. The Commissioner's decision is that the College has incorrectly applied the provisions at sections 14(1) and 14(2) of the FOIA.
2. The Commissioner therefore requires the College to issue a fresh response under the FOIA which does not rely on section 14.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 29 March 2017 the complainant made the following request for information under the FOIA:

'FOI for the academic year 2016-17 to date: staff-on-staff sexual harassment.

N.B. the term university here refers to King's college specifically, rather than Cambridge University as a whole.

1. How many allegations of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct by university

staff have you received from other members of staff for each year over the past year? If recorded, what was the gender of the complainant and the person accused? If recorded, please breakdown by academic/non-academic staff.

2. How many of these allegations led to a formal complaint or another form of investigation, either internal (by the university) or external (by, for example, the police), over the past year? If recorded, please breakdown this figure by the types of investigation.

3. How many members of staff have changed jobs within the university or left the university following allegations of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct made by other members of staff for each year over the past year? If recorded, please breakdown by academic/non-academic staff.'

5. The College responded on 5 April 2017 and refused to provide the requested information citing the exemption provided by section 14(2) of the FOIA. (Repeat requests)
6. The complainant requested an internal review on 9 May 2017 and the College provided the outcome of the internal review on 22 May 2017 maintaining its original position.

Scope of the case

7. The complainant contacted the Commissioner on 23 May 2017 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, the College also cited the exemption provided by section 14(1) of the FOIA. (Vexatious requests).
9. The Commissioner has considered the scope of the case to be whether the College is entitled to rely on the provisions at section 14(1) and 14(2) of the FOIA.

Previous requests

10. The complainant made the first request on sexual harassment on 13 October 2016. It was a 15 part request for the five academic years to 2015-16:

'The five years I like data for are the following academic years:

2011-12

2012-13

2013-14

2014-15

2015-16

(N.B. Please include status of student: 1. undergraduate, 2. postgraduate/masters, 3. postgraduate doctoral.)

1.1 Has the university used non-disclosure agreements (NDAs) or confidentiality clauses in settlements for sexual harassment, sexual assault, rape, stalking and/or other forms of gender violence or sexual misconduct perpetrated or allegedly perpetrated by staff against students?

1.2. Is there a policy covering the use of NDAs in these circumstances?

1.3. If so, please provide a copy of the policy.

1.4. In how many cases have NDAs been used over the past five years. Please break down this figure by year.

2. How many times over the past five years has the university awarded students financial settlements following allegations or proven cases of sexual harassment, sexual assault, rape, stalking and/or other forms of gender violence by staff. Please break this down for each year over the past five years. What is the total value of these settlements each year over the past five years?

3. How many times over the past five years has the university issued students with Completion of Procedure letters in relation to complaints of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct by staff? How many of those complaints were then taken by the student to the OIA? In how many of the cases taken to the OIA were the complaint outcomes justified or partly justified?

4. How many allegations of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct by university staff have you received from students each year, over the past five years? If recorded, what was the gender of the staff and students concerned? Please breakdown by academic/non-academic staff.

5. How many of these allegations led to a formal complaint or another form of investigation, either internal by the university or external by, for example, the police, for each year, over the past five years? Please breakdown this figure by the types of investigation.

6. *When conducting a disciplinary proceeding against a member of staff following an allegation of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct is the complainant informed of the outcome of the proceedings? If so, how are they informed?*

7. *Does the university have an institution-wide policy for staff-student relationships? If so, please provide a copy of it.*

8. *How many staff declared to a university official that they were in consensual relationships with students, or had had consensual (sexual) relations with students, for each year, over the past five years? If recorded, how many of these students were undergraduates and how many were postgraduates? Please breakdown by academic/non-academic staff.*

9. *How many members of staff have changed jobs within the university or left the university following student allegations and/or complaints of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct for each year over the past five years? Please breakdown by academic/non-academic staff.*

(N.B. Please include status of staff: 1. academic and 2. non-academic)

10.1 *Has the university used non-disclosure agreements (NDAs) or confidentiality clauses in settlements for sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct by staff against other staff members?*

10.2 *Is there a policy covering the use of NDAs in these circumstances?*

10.3 *If so, please provide a copy of the policy.*

10.4 *In how many cases have NDAs been used over the past five years? Please break down this figure by year.*

11 *How many times over the past five years has the university awarded staff financial settlements as a result of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct perpetrated or allegedly perpetrated by other staff members. Please break this down for each year over the past five years. What is the total value of these settlements each year over the past five years?*

12 *How many allegations of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct by university staff have you received from other members of staff for each year over the past five years? If recorded, what was the gender of the complainant*

and the person accused? Please breakdown by academic/non-academic staff.

13 How many of these allegations led to a formal complaint or another form of investigation, either internal (by the university) or external (by, for example, the police), for each year, over the past five years? Please breakdown this figure by the types of investigation.

14. When conducting a disciplinary proceeding against a member of staff following an allegation of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct is the complainant informed of the outcome of the proceedings? If so, how are they informed?

15. How many members of staff have changed jobs within the university or left the university following allegations of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct made by other members of staff for each year over the past five years? Please breakdown by academic/non-academic staff.'

11. On 14 November 2016 the College responded that '*there have been no allegations of sexual harassment (or other harassment of the type you describe) by or about staff in the last 5 years.*'
12. On 14 December 2016 the complainant made a follow up request on the same subject for the current academic year 2016-17 to date:

'Staff-on-student harassment

Please include status of student: 1. undergraduate, 2. postgraduate/masters, 3. postgraduate doctoral.

1.1 Has the university used non-disclosure agreements (NDAs) or confidentiality clauses in settlements for sexual harassment, sexual assault, rape, stalking and/or other forms of gender violence or sexual misconduct perpetrated or allegedly perpetrated by staff against students in the past year??

1.2. If so, in how many cases have NDAs been used over the past year?

2. How many times over the past year has the university awarded students financial settlements following allegations or proven cases of sexual harassment, sexual assault, rape, stalking and/or other forms of gender violence by staff. What is the total value of these settlements?

3. How many times over the past year has the university issued students with Completion of Procedure letters in relation to complaints of sexual harassment, sexual assault, rape, stalking and/or other gender

violence or sexual misconduct by staff? How many of those complaints were then taken by the student to the OIA? In how many of the cases taken to the OIA were the complaint outcomes justified or partly justified?

4. How many allegations of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct by university staff have you received from students over the past year? If recorded, what was the gender of the staff and students concerned? Please breakdown by academic/non-academic staff.

5. How many of these allegations led to a formal complaint or another form of investigation, either internal by the university or external by, for example, over the past year? Please breakdown this figure by the types of investigation.

6. How many staff declared to a university official that they were in consensual relationships with students, or had had consensual (sexual) relations with students, over the past year? If recorded, how many of these students were undergraduates and how many were postgraduates? Please breakdown by academic/non-academic staff.

7. How many members of staff have changed jobs within the university or left the university following student allegations and/or complaints of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct over the past year? Please breakdown by academic/non-academic staff.

Staff-on-staff harassment

(N.B. Please include status of staff: 1. academic and 2. non-academic)

8. In how many cases have non-disclosure agreements (NDAs) or confidentiality clauses been used in settlements for sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct by staff against other staff members over the past year?

9. How many times over the past year has the university awarded staff financial settlements as a result of sexual harassment, sexual assault, rape, stalking and/or other gender violence or sexual misconduct perpetrated or allegedly perpetrated by other staff members. What is the total value of these settlements?

13. On 15 December 2016 the College provided a 'nil' response to each part of the request.
14. The third request of 29 March 2017 is the subject of this complaint.

Reasons for decision

Section 14 – Repeat requests - Section 14(2)

15. Section 14(2) of the Act states that

“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 for that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request”.

16. Requests can be refused on the basis of section 14(2) if:

- It is made by the same person as a previous request;
- It is identical or substantially similar to the previous request; and
- No reasonable interval has elapsed since the previous request.

17. The Commissioner has therefore considered each of these aspects in turn.

Are the requests made by the same person?

18. The Commissioner notes that all the requests were made by the same person.

Is the request identical or substantially similar to the previous requests?

19. The Commissioner considers that a request will be substantially similar to a previous request if a public authority would need to disclose substantially similar information to respond to all requests, even if the wording of the request is not identical.

20. The Commissioner notes that the wording of the third request for staff-on-staff harassment repeats the wording (see paragraph 10 above, questions 12, 13 and 15) of the first request but is for a different timeframe. The first request was for the five academic years to 2015-16 and the third request is for the current academic year 2016-17.

21. The wording of the third request for staff-on-staff harassment does not repeat the wording of the second request (See paragraph 12 above, questions 8 and 9) but does cover the same academic year.

22. Although the same overall subject matter of sexual harassment is considered in all three requests, the test is whether the public authority would have to disclose substantially similar information and in this case

it does not. Therefore, the Commissioner considers that the three requests are not identical.

Has a reasonable interval elapsed since the previous request?

23. What constitutes a reasonable interval will depend on the circumstance of the case including how likely the information is to change, how often records are updated and any advice previously given to the requester.
24. In this case, the College had responded to the two previous requests with a nil response: there were no allegations of staff-on-staff sexual harassment in the five years up to 2015-16 and no non-disclosure agreements or financial settlements relating to staff-on-staff sexual harassment in the current academic year up to the date of the second request (14 December 2016).
25. The College is concerned that publication of data in response to the third request on 29 March 2017 would risk identifying any individuals who might be involved.
26. The College argued that *'It is not possible to anonymise small numbers and small timeframes.'* The College referred to the Commissioner's guidance that small numbers can be replaced with 'less than 5' and argued that the

'same argument also applies to the temporal distribution. If requests for information about the number of cases are repeated at short intervals, then it becomes easier to see when an incident has occurred and hence to be able to identify the individuals concerned, using other information that might be available.'

If, at some future point, there is a case to report, our response would change from "Nil" to "Less than 5" and the recipient would be able to establish that a case had occurred between two requests. Since all of the past responses have been "Nil", it is most unlikely that the "Less than 5" response would successfully maintain anonymity.'

27. The Commissioner notes the concern of the College that publishing small numbers could risk identifying individuals. However, the Commissioner cannot comment in this decision notice on possible responses to future FOIA requests.
28. The Commissioner also notes that the phrase 'less than 5' is often used in the suppression of the individual numbers of '0, 1,2,3,4 and 5'. Therefore, it would be possible for the College to respond to the third request dated 29 March 2017 using the 'less than 5' response even if the response for the current academic year is the same 'nil' response as the previous five years.

29. Taking into consideration the above, the Commissioner considers that this request is not a repeated request as this particular information has not previously been requested for this current academic year. Therefore, the College incorrectly applied the exemption for repeated requests at section 14(2) of the FOIA.
30. The Commissioner will go on to consider the exemption for vexatious requests at section 14(1) of the FOIA.

Section 14 – Vexatious requests - Section 14(1)

31. 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. There is no public interest test.
32. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹ the Upper 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.' The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
33. The Commissioner will therefore consider 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.
34. 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 requests². 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 a case will need to be considered in reaching a judgement as to whether a request is vexatious.

¹ UKUT 440 (AAC) (28 January 2013)

² <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

Is the request obsessive?

35. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
36. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances?
37. The College argued that '*the time required to provide the information is not justified by its value*'.
38. The College stated that '*Sexual harassment is indisputably important and a matter of concern to the College as well as to the public generally. It is less clear that repeated requests are justified, especially when previous answers have been negative.*'
39. The College explained that it does '*not maintain a register of discipline for students, staff or Fellows. Instead, any serious allegations or investigations are recorded in confidential personnel files kept by different parts of the College. So, a full attempt to answer the questions posed by [redacted name of the complainant] would require each file to be examined to establish if there were a relevant record... it is the value that we claim is not suitable to justify the burden of all four offices reviewing their records to come up with, in all likelihood, a nil answer, and if it's not nil then it's still not publishable.*'
40. Although the College has stated that the three FOIA requests are similar in nature the Commissioner notes that the third request is for information on the current academic year and is not a repeated request.
41. The Commissioner has taken into account the context and background of the two previous requests to the third request and she does not consider that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

Is the request designed to cause disruption or annoyance? Does it have the effect of harassing the public authority?

42. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it

is justified and proportionate, it is helpful to assess the purpose and value of the request.

43. The College stated that *'Several times a year we get asked questions under FOI about discipline, complaints, harassment (sexual, racial or otherwise) and variations on those themes, made by or against staff, Fellows, or students. The offices that have to take time to consider the question, though it is usually a 'nil' return, are: Tutorial, Personnel, Vice-Provost, Lay Dean and Head Porter.'*
44. The Commissioner can only consider the three requests from this complainant as the College has not shown that the other requests are in any way linked to this complainant's requests.
45. The Commissioner has considered all the evidence presented to her and has found that it is not sufficient to suggest that the request was vexatious in that it was designed to cause disruption and annoyance to the staff at the College or designed to have the effect of harassing the College.

The Commissioner's decision

46. The Commissioner has considered both the College's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the College was not correct to find the request vexatious. She has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request is not obsessive and does not have the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has not been applied correctly in this instance.

Right of appeal

47. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

48. 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.
49. 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

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