

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 23 September 2010**

**Public Authority:** Queen Mary, University of London  
**Address:** 327 Mile End Road  
London  
E1 4NS

### Summary

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The complainant made a request for information to Queen Mary, University of London ("QMUL") on 19 January 2010 for certain details regarding the Admissions and Recruitment Committee held in May 2009. QMUL refused his request on the grounds that it believed the request to be vexatious and applied section 14(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner has considered the context and background leading up to this request and has decided that QMUL correctly applied section 14(1) within that context.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### Background

2. The Commissioner has been informed of the following by Queen Mary, University of London (QMUL):
  - That the complainant had been accepted by QMUL as a transfer student from another university
  - That this offer was based on certain conditions being met
  - That the complainant did not meet those conditions and the offer was withdrawn on 6 August 2008

- That the complainant then appealed against this decision by his previous university
- That he was informed in July 2009 that QMUL no longer accepted such transfers
- That the complainant then appealed QMUL's decision in July/August 2009
- That the complainant's first FOI request to QMUL was made on 25 September 2009.

## The Request

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3. On 19 January 2010 the complainant made the following request for information:

*"Thank you for your email below confirming that the 'Appeals and Complaints Procedure for Applicants' was **"discussed and approved"** by the **"Admissions and Recruitment Committee"** at the **"May 2009 meeting"**.*

*Please clarify:*

*(i) the membership that comprises the 'Admissions and Recruitment Committee';*

*(ii) the QMUL Staff in attendance at the meeting of the 'Admissions and Recruitment Committee' to which you refer held in **May 2009**;*

*(ii)i whether members of the 'Admissions and Recruitment Committee' who were not in attendance at the **May 2009** meeting of the 'Admissions and Recruitment Committee' were provided with copies of the minutes of that meeting detailing that the 'Appeals and Complaints Procedure for Applicants' had been "approved" by the 'Admissions and Recruitment Committee' at the meeting to which you refer held in **May 2009**."*

4. QMUL responded on 11 February 2010 at which point section 14(1) was applied:

*"Unfortunately, taken in context of your previous correspondence over several months, the College considers your latest request to be vexatious. This request is therefore refused under s.14(1) of the Freedom of Information Act 2000."*

5. On 12 February 2010 the complainant responded, disputing that his request was vexatious and suggesting that QMUL staff had not provided him with the requested information in order to "*delay the investigation of this Disability Discrimination matter in order to prevent the matter from being addressed within the Statutory Period*".

## The Investigation

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### Scope of the case

6. On 15 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider what he asserted was the failure of QMUL staff to comply with the Act in order "*...to obfuscate the process of obtaining information relevant to impending legal action against QMUL following various counts of unlawful acts by QMUL Staff against me*".
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

8. The Commissioner wrote to QMUL on 26 February 2010 to ask if an internal review had been conducted into the decision to withhold the requested information.
9. QMUL responded on the same day explaining that no internal review had been conducted but that the decision to apply section 14(1) had been "carefully considered".
10. On 3 March 2010 the Commissioner wrote again to suggest that he would normally expect an internal review to be conducted and it was pointed out that an internal review had been offered in the refusal notice.
11. QMUL agreed on the same date that an internal review would be carried out and the Commissioner wrote to the complainant explaining that he would expect him to wait for the outcome of this review.
12. The internal review was carried out on 18 March 2010 and upheld the original decision having considered the following factors:

- *The amount of correspondence since July 2009*
- *The number of FOI requests submitted since September 2009*
- *The number of people within QMUL that [the complainant] has contacted*
- *The number of outside parties that [the complainant] has copied into various correspondence*
- *The quantity of repetitive questions regarding details of documented policy and procedure*

The Reviewer concluded that, taking into account both the context and history of the request, she considered the FOI request dated 19 January 2010 to be vexatious as outlined in the Information Commissioner's Office guidance *Vexatious Requests: a short guide* (actual version 3 December 2008).

## Analysis

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### Procedural Matters

#### Section 14

13. Section 14(1) of the Act states that:

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

The full text of section 14 is available in the Legal Annex at the end of this Notice.

14. The Commissioner's approach is outlined in his guidance entitled 'Vexatious or repeated requests'<sup>1</sup>. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:

- it would create a significant burden in terms of expense and distraction
- it is designed to cause disruption or annoyance
- it has the effect of harassing the public authority
- it can otherwise fairly be characterised as obsessive or manifestly unreasonable
- it clearly does not have any serious purpose or value

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<sup>1</sup> Found

at: [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

15. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130)

*"a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach..."* (paragraph 20).

16. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) at paragraph 11 stated that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
17. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:

*"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one"*

In doing so the Commissioner can therefore consider the context and history of a request in addition to the request itself in relation to one or more of the five bullet points listed in paragraph 14.

18. The Commissioner has considered whether QMUL has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case. In doing so he has taken note of all of the correspondence and contact between the complainant and QMUL from July 2009 up to the date of the request.

**Can the request fairly be characterised as obsessive or manifestly unreasonable?**

19. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable?

20. In assessing whether a request can be deemed obsessive or manifestly unreasonable, a public authority may take into account previous knowledge it has of the requestor as well as previous grievances, disputes or complaints involving the requestor.
21. QMUL has explained that the complainant's "grievance" has been fully investigated. Although his appeal has been completed the complainant has continued to email members of staff and submit FOI requests. QMUL states that the request in itself is not vexatious but in the context of the number of emails sent and external people copied in, it has concluded that it is.
22. QMUL has asserted that many of the complainant's emails are long and accusatory, though many of these are not FOI requests they are intertwined with them. The emails sent by the complainant relate in detail to policies and/or procedures. These emails also reference previous emails which have been pasted onto the new emails in an obsessive and repetitive manner. Similarly the complainant replies to an FOI response, sometimes straight away, with supplementary requests or accusations. QMUL states that the complainant has exhausted every avenue of appeal.
23. QMUL does not believe that any information had been withheld from the complainant prior to the decision to apply section 14, other than some incorrect information that was sent as the result of a misunderstanding as to what the request alluded to. The complainant has accused QMUL of deliberately withholding information though QMUL has stressed that the offer of a place was conditional and withdrawn legitimately.
24. The Commissioner notes that a factor in considering whether a request is vexatious can, in some circumstances, be the person who is making the request. This is illustrated in the Tribunal comments in *Welsh & the Information Commissioner (EA/2007/0088)* "...it is possible for a request to be valid if made by one person, but vexatious if made by another, valid if made to one person, vexatious if made to another..." (paragraph 21) and similarly in *Gowers & the London Borough of Camden* at paragraph 29 "...it is not only the request itself that must be examined, but also its context and history".
25. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. In this case, taking into account the context and background to the request, and the fact that the complainant's grievance had been fully investigated and the appeal process completed prior to the

request of 19 January 2010, the Commissioner considers that the request can fairly be seen as obsessive.

26. In this case, the Commissioner is persuaded by QMUL's argument that the complainant's persistence would appear to be based on a grievance which could be classed as obsessive when placed in context. In view of this he accepts QMUL's contention that it has tried to comply with the complainant's previous requests but that the volume of correspondence and subsequent requests has become obsessive.

**Would the request have the effect of harassing the public authority?**

27. The complainant has been contacting members of QMUL staff – QMUL estimates the figure at 22 - over several months from July 2009. At least 16 outside parties have been copied into these emails. QMUL suggests this may be an attempt by the complainant to elicit some contradiction or admission of error upon which to seize. QMUL also estimates that 37 emails were sent between July and November 2009 alone and these figures do not include FOI requests or follow-ups. Ten FOI requests have been submitted prior to 19 January 2010 plus many follow-ups which were not treated as new requests. Some members of staff have been distressed by accusations of discrimination and threats of legal action by the complainant. Additionally two members of QMUL staff have professed the view that they consider these emails to be harassment.
28. The Commissioner considers that QMUL has provided enough evidence in terms of the complainant's proliferation of emails and requests to members of staff, to indicate strongly that the requests and correspondence had the effect of harassing QMUL at the point at which this request was sent on 19 January 2010. Furthermore, taking into account the fact that every appeal avenue open to the complainant seems to have now been exhausted, for example, the grievance had been fully investigated and the appeal completed prior to the request on 19 January 2010, the Commissioner considers this request to be a continuation of the complainant's focus on the refusal to be accepted in QMUL's medical school. This attempt to keep reopening the issue did have the effect in the Commissioner's view of harassing QMUL.

**Would complying with the request create a significant burden in terms of expense and distraction?**

29. QMUL has stated that compliance would not create a significant burden in terms of expense and distraction.

30. As QMUL has stated that the request would not create a significant burden in terms of expense and distraction, the Commissioner has not considered whether this would be the case.

### **Is the request designed to cause disruption or annoyance?**

31. QMUL believes that the requests are "*ultimately designed for these purposes though only in part*". In other words QMUL has found that some responses to requests have supplementary questions asked months later. Other requests have been "frivolous" and an example was provided of asking for the Principal and other members of staff's registration details with the GMC. Although QMUL has used the term "frivolous" the Commissioner is looking at whether the request is "vexatious".
32. Though QMUL partly considers that the request was designed to cause disruption or annoyance it does not categorically state that this request was designed for that purpose. The Commissioner considers that there is insufficient evidence to establish whether the request was designed to cause disruption or annoyance. The fact that some requests prior to this request have been considered to be frivolous or annoying is a matter of interpretation and does not lead the Commissioner to conclude that the request of 19 January 2010 was designed to cause disruption or annoyance.

### **Does the request lack any serious purpose or value?**

33. QMUL considers that this particular request does not lack serious purpose or value but accepts that many of the requests and emails that preceded it were designed to build a case or show that a policy was not in place, or that a procedure was not being followed or to raise questions concerning a member of staff's qualifications.
34. Again, the Commissioner cannot conclude that this request lacks serious purpose or value particularly as QMUL does not believe it to be the case in this instance, albeit with the proviso that it does consider that preceding requests have lacked serious purpose or value.

### **Conclusion**

35. As explained previously it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner considers that there are sufficient grounds to justify the upholding of the application of section 14(1) on the basis of the two factors mentioned above. The Commissioner is satisfied that, when taken in the context of previous



correspondence, the cumulative effect of the requests and correspondence was vexatious by the point at which this request for information was made on 19 January 2010. He also accepts that, though the complainant had a serious purpose in making this request, this was outweighed by the fact that his previous requests had already had the effect of harassing QMUL. The Commissioner accepts the assertion that the quantity and frequency of communications made by the complainant could be construed as obsessive.

## **The Decision**

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36. The Commissioner's decision is that QMUL correctly applied section 14(1) as the complainant's request can be correctly categorised as vexatious under the provisions of the Act

## **Steps Required**

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37. The Commissioner requires no steps to be taken.

## Right of Appeal

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38. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 23<sup>rd</sup> day of September 2010**

**Signed .....**

**Rachael Cragg  
Group Manager, Complaints Resolution**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

"Any person making a request for information to a public authority is entitled

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(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

**Section 1(2)** provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

**Section 1(3)** provides that -

"Where a public authority -

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

**Section 1(4)** provides that -

"The information -

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

**Section 1(5)** provides that -

"A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."

**Section 1(6)** provides that -

"In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny"."

### **14 Vexatious or repeated requests**

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

(2) 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 from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.