

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

### **Decision notice**

**Date:** 26 July 2018

**Public Authority:** Ulster University

**Address:** e.mullan@ulster.ac.uk

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

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1. The complainant has requested information from Ulster University ("the University") in relation to a tender for its Greater Belfast Development programme.
2. The Commissioner's decision is that the University has incorrectly relied upon section 14(1) of the FOIA in relation to the complainant's request.
3. Therefore the Commissioner requires the University to take the following steps:-
  - Issue a fresh response without reliance on section 14(1)
4. The University 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**

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5. On 8 November 2017, the complainant wrote to the University and requested information in the following terms:

"I wish to request the following information under the Freedom of Information Act. In relation to the Greater Belfast Development Programme and the Cost Management tender, I ask for the following;

- The names of all University of Ulster attendees at preparatory, supplier and tender evaluation meetings relating to the Cost Management Tender (second stage) and in particular, those from Procurement and Physical Resources Departments and from GBD Project Management.
- Any and all records and documents referring to any potential conflicts of interest, or any declarations of conflict of interest by University employees (and subsequent approval or otherwise) and/or participating suppliers relating to the Cost Management Tender.

Please let me know if there are any fees.”

6. The University responded stating that it was refusing to disclose information in response to the complainant’s request as it deemed the request to be vexatious under section 14(1) of the FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner wrote to the University seeking its further submissions on 6 March 2018. The University responded to the Commissioner on 30 April 2018, providing its submissions as to its application of section 14(1) of the FOIA to the complainant’s request.
9. The Commissioner has considered whether the University has correctly applied section 14(1) of the FOIA as a basis for non-disclosure.

### **Reasons for decision**

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#### **Section 14(1) – vexatious requests**

10. Section 14(1) of the FOIA states that a public authority is not obliged to respond to a request for information if the request is vexatious.
11. The term ‘vexatious’ is not defined in the FOIA. The Commissioner has identified a number of ‘indicators’ which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. In short they include:

- Abusive or aggressive language
  - Burden on the authority
  - Personal grudges
  - Unreasonable persistence
  - Unfounded accusations
  - Intransigence
  - Frequent or overlapping requests
  - Deliberate intention to cause annoyance
12. 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.
13. The Commissioner's guidance suggests that if a request is not patently vexatious 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. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
14. Where relevant, public authorities may also need to take into account wider factors such as the background and history of the request.

### **Background and history of the request**

15. The complainant was employed by the University in its Procurement Department several years ago, and worked on the tender process for the Greater Belfast Development programme. After being removed from his role due to internal changes and requirements within procurement, the complainant contended that he had been treated unfairly and instigated litigation against the University, which was dismissed. He has continued to make several requests to the University under the FOIA regarding the carrying out of the tender process, as this is the main underlying issue in his having been removed from his role. The complainant considers that the University made a false allegation against him of errors regarding the scoring process for companies involved in the tender process, so he continues to seek documentation regarding that, in particular cost management documentation, in order to attempt to prove that the University's allegation was false.

### **The University's position**

16. The University has provided the Commissioner with a list of the complainant's requests – he has made several requests, including two Subject Access Requests (SAR) for information held about him between 2010 and 2016, and 2017, and also made two separate requests under the FOIA in 2016 for information in relation to the tender process carried out by the University, as explained in paragraph 14 above.

### **Detrimental impact of complying with the request**

17. The University has provided responses to the complainant's previous requests and considers that the complainant has now taken an unreasonably entrenched position, putting further strain on the University's time and resources. The University has also informed the Commissioner that it finds the tone and language of the complainant's correspondence to it objectionable and that it implies unfounded accusations that the University is seeking to conspire or cover up issues. The Commissioner has viewed said correspondence and can see nothing in particular that is objectionable in its tone and language, however it accepts that the complainant appears very persistent in pursuing the issue at hand.

### **Unjustified or disproportionate impact upon the University**

18. The University considers that the complainant's further FOIA request does not have serious purpose or value, and that no wider value or public interest would be gained from responding to the request which would justify the aggregated and disproportionate burden upon the University of responding to the complainant's requests and correspondence. The University is a public authority which is obliged to protect its resources, and indeed the Upper Tribunal in the case of *Information Commissioner v Devon County Council & Dransfield* (GIA/3037/2011) defined the purpose of section 14 as follows:-

*"Section 14...is concerned with the nature of the request and has the effect of disapplying the citizens' rights under Section 1(1)...the purpose of...Section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..."*

### **Wider context and history**

19. The University is cognisant of the fact that section 14(1) can only be applied to the request itself and not the individual who submitted it. However, in assessing the purpose and value of the complainant's request, the University had regard to the wider context in which the request was made. This involved taking into account the following:-
- Other requests made by the complainant
  - The number and subject matter of those requests
  - Any other previous dealings between the complainant and the University
20. The University has informed the Commissioner that the complainant has raised a number of Freedom of Information and Subject Access Requests since ending his employment in his procurement role in 2010. Those requests are all in relation to cost management tender documentation. The complainant's first request followed the initiation of legal proceedings by the complainant against the University, in both the Industrial Tribunal and the High Court, both of which were dismissed.
21. The University has had regard to the Commissioner's guidance in relation to handling the complainant's request. The University considers the following factors to be relevant in this case.
- Unreasonable persistence – the complainant is attempting to re-open an issue which has already been comprehensively addressed by the University.
  - Intransigence – the University considers that the complainant is taking an unreasonably entrenched position.
  - Frequent correspondence – the complainant submits frequent correspondence to the University about the same issues.
  - Disproportionate effort – the University considers that it would have to expend a disproportionate amount of resources in order to respond to the complainant's request when it considers the matter behind the request to be inconsequential.
  - Futile requests – the issue at the heart of the requests individually affects the complainant and has already been subjected to more than one form of independent investigation and has been conclusively resolved by the University.

## **The Commissioner's position**

22. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous and subsequent information requests. Clearly in this case, the University considers that the context and history strengthens its argument that the request is vexatious.
23. The Commissioner notes that the University considers that the complainant feels personally aggrieved about the issue at the heart of his requests. This concerns the removal from employment within the University's procurement department of an individual and is clearly a personal, rather than a wider public, interest.
24. The University considers that the complainant's correspondence contains aggressive tone and language, and it implies unfounded accusations against the University. However, the Commissioner does not consider that there is anything particularly objectionable or aggressive about the tone and language of the complainant's correspondence, or that there is any deliberate intention to cause annoyance to the University, rather that the complainant is frustrated with what he considers to be an unresolved issue and is seeking answers. The difference between the position of the complainant and that of the University is that the University considers that the issue has already been resolved, whereas the complainant is still seeking resolution.
25. The complainant made previous requests for cost management tender documentation and, following the Commissioner's intervention, the University provided the complainant with information in response to his request, and also offered the complainant the opportunity to come and view particular cost tender management documentation which related to the Greater Belfast Development programme and the complainant's previous role within the procurement department. The complainant did not choose to avail of that opportunity.
26. The Commissioner has carefully considered both the University's arguments and the complainant's position regarding the information request in this case. The Commissioner has carefully reviewed all the information and evidence presented to her by both parties and finds that despite the request serving a serious purpose, i.e. to try and resolve a contentious issue, it is part of a pattern of behaviour that has had an extensive impact on the University. She notes that the University has responded to all the complainant's previous requests, provided him with information in relation to them (albeit following the Commissioner's intervention in relation to his FOIA requests) and has offered him the opportunity to call to the University and view information within the scope of his requests.

27. The Commissioner further notes that the complainant has initiated two sets of legal proceedings, and that there have also been several independent investigations carried out into the complainant's allegations against the University, which have all been concluded long ago. From the University's point of view, the complainant has been provided with all relevant information and the issues at hand have been comprehensively addressed long ago. The Commissioner accepts that constantly having to re-visit old issues which have been resolved places a burden upon the University, however she does not necessarily accept that this burden is disproportionate to what would actually be achieved by searching for/disclosing the requested information.
28. The Commissioner has examined the number and frequency of requests made by the complainant to the University, and notes that they are not particularly extensive in number. Although the complainant did not avail of the opportunity to visit the University and inspect the information he had requested, he confirmed to the Commissioner that he had concluded that what he had been invited to inspect would not actually help his case that he had been treated unfairly by the University. Also, in relation to the current request, it does not appear that he has actually previously requested that particular information.
29. The Commissioner, having taken all arguments and factors into account, considers that on this occasion, in all the circumstances of this case, the University has incorrectly relied upon section 14(1) of the FOIA.

### **Right of appeal**

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

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

31. 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.
32. 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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**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**