

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2018

Public Authority: University of Cambridge
Address: University Offices
The Old Schools
Trinity Lane
Cambridge CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested from the University of Cambridge ('the University') particular communications and reports. The University has refused to comply with the request which it has categorised as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is as follows:
 - The complainant's request cannot be categorised as vexatious under section 14(1).
3. The Commissioner requires the University to take the following step to ensure compliance with the legislation:
 - Provide a response to the complainant's request that does not rely on section 14(1) and which complies with the FOIA.
4. The public authority must take this step 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.

Background

5. The Commissioner notes that this case relates to a Cambridge PhD student who was murdered while pursuing fieldwork in Egypt in February 2016. A professor named in the request was his doctoral supervisor. Although the circumstances of the death are in the public domain, the Commissioner understands that the formal police investigations are ongoing and therefore the Commissioner has redacted the name of the student and the supervisor in this decision notice.
6. The Commissioner also notes that the complainant is a journalist.
7. The complainant had submitted a similar, but broader, request to the University in October 2017 which had resulted in the Commissioner's decision in FS50713938¹, in February 2018. In that case the Commissioner had found that the University could rely on section 12(1) to refuse to comply with the request (cost exceeds the appropriate limit) but had breached section 16(1) (advice and assistance).
8. The refined request that the complainant went on to submit on 20 February 2018 and which is the subject of this notice was, in effect, a new request.

Request and response

9. On 20 February 2018 the complainant wrote to the University and requested information in the following terms:

"1) All electronic or paper communication between [redacted name of supervisor] and [redacted name of student] that the University of Cambridge so far found and/or gave to the British or Italian authorities;

2) Any report or paper that [redacted name of student] sent to, or filed with [redacted name of supervisor].

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2258263/fs50713938.pdf>

I am filing this new request on the basis of today's findings by the Information Commissioner's Office (see attached). ..."

10. The University responded on 19 March 2018. It refused to comply with the request under section 14(1) of the FOIA.
11. The complainant requested an internal review on 19 March 2018 and referred to the previous decision by the Commissioner: FS50713938. The University sent him the outcome of its internal review on 17 April 2018. It maintained its position that the complainant's request is vexatious under section 14(1) as to comply with it would place a disproportionate burden on the University.

Scope of the case

12. The complainant contacted the Commissioner on 17 April 2018 to complain about the way his request for information had been handled.
13. The Commissioner's investigation has focussed on whether the University can categorise the complainant's request as vexatious under section 14(1).

Reasons for decision

Section 14 – vexatious and repeat requests

14. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information if the request is vexatious.
15. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance

16. 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.
17. The Commissioner's guidance goes on to suggest 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.
18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
19. In correspondence to the Commissioner, the University has referred to the decision in FS50713938. It says that in its response to the complainant in that case it had relied on section 12(1) and section 14(1). Since the Commissioner had found that section 12(1) was engaged it had not been necessary for her to consider whether section 14(1) was also engaged. The University has referred the Commissioner to the section 14(1) submission that it provided in the earlier case because, it says, its arguments are identical. It is that submission that the Commissioner has considered.
20. In that submission, the University had first explained why complying with the request would exceed the appropriate cost limit under section 12(1) (a position the Commissioner had upheld).
21. The University had then explained that it is of the view that even if the requested information could be located, retrieved and extracted within the appropriate limit, the request is vexatious under section 14(1) of the Act. It said that this is primarily because of the disproportionate burden that would be imposed on the University in manually reviewing each and every document for material that is exempt under Part II of the Act.
22. The University considered that the exemption for personal information (section 40(2)) is highly likely to apply to significant parts of the requested information. It argued that although the student concerned is deceased, the correspondence in question will mention a wide variety of living individuals whose personal data it would be manifestly unfair to disclose without their consent given the circumstances surrounding the student's death.
23. The University also considered that the exemption for prejudice to the prevention and detection of crime (section 31(1)) is likely to apply to significant portions of the information sought. It said UK police are

carrying out a criminal investigation into the student's death, as they are required to do under European procedures at the behest of the Italian authorities, and that the University is continuing to provide information to the police to that end. The University advised that other exemptions are likely to apply on a more limited basis.

24. Finally, the University found, in a more general sense, that the complainant's request was an unjustified and inappropriate use of the Act because any disclosure would be likely to cause a significant level of distress to the student's family, friends and those who taught him at the University, notably the supervisor concerned. The University noted that while the public interest is irrelevant to the application of section 14(1), it considered that it is clearly in the public interest that the circumstances of the student's death are fully investigated by the appropriate authorities without the prejudice that is likely to be caused by disclosures of relevant information to journalists.
25. In FS50713938 the complainant had requested correspondence between the student and the University generally and for any report or paper that the student had filed with the University. The Commissioner found that the University could rely on section 12(1) with regards to that request. The current request, however, is more specific. It is for correspondence between the student and one particular, named professor and for any papers or reports that the student filed with that named professor. It is, in effect, a different, and narrower, request.
26. In her published guidance on vexatious requests², the Commissioner explains that an authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare information for disclosure would impose a grossly oppressive burden on the organisation.
27. However, the Commissioner goes on to say that she considers there to be a high threshold for refusing a request on such grounds. This means that an authority is most likely to have a viable case where:
 - The requester has asked for a substantial volume of information AND

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

- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner AND
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
28. In the event that a refusal should lead the requester to complain to the Commissioner, she would expect the authority to provide her with clear evidence to substantiate its claim that the request is grossly oppressive. The Commissioner will consider each request referred to her on the individual circumstances of each case.
29. The University's position in this case is as has been outlined above. It appears to the Commissioner that at this point the University has not carried out any searches for the more specific information that has now been requested and therefore it cannot know the volume of information held, if any. It follows that the University cannot know for certain what, if any, information would need to be redacted and how this information is distributed throughout the requested material.
30. In the absence of any further detail on this matter from the University, in the Commissioner's view it would not be an oppressive, or even a significant, burden to search the files of one named professor in order to identify if relevant information is held, and to redact any information that is held, if and as necessary.
31. Having considered her guidance, she is therefore not persuaded that the current request can be categorised as vexatious under section 14(1).
32. The Commissioner notes that she has required the University to issue the complainant with a response to his request that complies with the FOIA. She makes the observation that, given the wider circumstances of the situation, the ongoing police investigation etc - if relevant information is held, a fresh response from the University will not necessarily lead to the complainant receiving any of this information.

Right of appeal

33. 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

34. 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.
35. 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

Pamela Clements
Group Manager
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Wycliffe House
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SK9 5AF