Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **23 January 2012**

Public Authority: **The University of Salford**
Address: **43 Crescent**
Salford
M5 4WT

Decision (including any steps ordered)

1. The complainant has made five requests for information to the University of Salford (the university), all of which were refused by the university under section 14 of the FOIA. The university considered the complainant's requests to be part of a campaign and refused them as vexatious on this basis.

2. The Information Commissioner's decision is that the university has incorrectly applied section 14 to the requests in this case.

3. The Information Commissioner (the Commissioner) requires the public authority to take the following steps to ensure compliance with the legislation.

    - Respond to the requests in accordance with the provisions of section 1 of the FOIA.

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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted five requests for information via *WhatDoTheyKnow.com*, four on 11 December 2010 and one on 5 January 2011. The university refused them all on the same basis. The requests are listed in Annex 1 to this decision notice.

6. The university responded to each of the 11 December requests on 12 January 2011. It deemed each request to be vexatious and refused to provide the information.

7. The university responded to the 5 January 2011 request on 2 February 2011. It again deemed the request to be vexatious and refused to provide the requested information.

8. Following an internal review, the university wrote to the complainant on 15 February 2011. It stated that it considered all five requests to be linked to approximately 120 other requests it had received. The majority had been refused as vexatious and the Commissioner had upheld those decisions. The university said that it considered the complainant's requests as vexatious as they appeared to be part of a campaign designed to cause harassment and distress to its staff.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his five requests had been handled. As the Commissioner reached the same decision for each request, he has issued one decision notice which applies equally to all the requests mentioned in the complaint.

10. The Commissioner initially considered whether the requests were vexatious when considered as part of a campaign. As he was not satisfied that the university had correctly refused the requests on these grounds, he went on to consider whether the university was correct to refuse the requests as vexatious in isolation of any campaign.

Reasons for decision

11. The university cited section 14(1) in response to the complainant's requests. This provides that a public authority is not obliged to comply with a request if it is vexatious.

12. The Commissioner's published guidance on section 14(1)1 provides that the following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious.

- whether compliance would create a significant burden in terms of expense and distraction;
- whether the request is designed to cause disruption or annoyance;
- whether the request has the effect of harassing the public authority or its staff;

- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
- whether the request has any serious purpose or value.

Consideration of the characterisation of the requests as vexatious in the context of a wider campaign

13. This complaint is similar to a number of other complaints the Commissioner has received about requests the university refused. Having received a substantial number of requests between October 2009 and February 2010, the university believed these were associated with each other to varying degrees and characterised this as a campaign.

14. The Commissioner has considered a number of complaints in relation to this campaign and has issued a number of decision notices[1]. In the majority, but not all, he upheld the university's application of section 14(1) in the context of a concerted campaign designed to burden and distract the university and its staff.

15. In its submissions for this case, the university mainly relied on the decisions made in FS50304283 and Duke v Information Commissioner [EA/2011/0060] in which the Commissioner and the First Tier Tribunal (the Tribunal) upheld the university's application of section 14(1) in relation to 13 requests submitted by one individual in the context of a campaign undertaken between November 2009 and February 2010.

16. The associations between the requests in the campaign were derived not only from the timing, a small number of individuals submitted a high volume of requests during a short period of time, but also from some significant similarities in the information requested.

17. The requests which were considered to be part of the campaign exhibited characteristics which connected them to an individual who had been dismissed from a post-graduate staff position. The university maintained that the timing and content of those requests strongly suggested that the requesters had been acting in concert in pursuit of a campaign to disrupt the workings of the university, possibly orchestrated by, or on behalf of, the dismissed individual.

18. The university explained that the complainant in this case is a known associate of this individual, and assisted him in his proceedings at Employment Tribunal. The complainant acknowledges this association, but stated to the Commissioner that "*my requests are personally made, have not been co-ordinated or linked to any other requests and I am not*

[1] FS5028812, FS50297312, FS50304283, FS50306518

part of any campaign with regard to other requests." He says he wants information relating to bullying he was subject to at the university and which he maintains the university lied about.

19. The Commissioner recognises that there is nothing in the FOIA which prevents the aggregation of requests from disparate sources for the purposes of section 14 of the FOIA and he is mindful that section 12 (costs) makes specific provision for the consideration of costs where two or more requests have been made by different persons who appear to the public authority to be acting in concert, or in pursuance of a campaign. This approach was adopted in decision notice FS50304283.

20. In the case of a refusal under section 12 as a result of the aggregation of multiple requests, it is for the public authority to show that the refused requests are connected and the Commissioner will consider the matter on the merits of the case. Therefore, he initially sought the university's arguments for its belief that the requests in this case were submitted in pursuance of the campaign documented in the decisions listed in paragraph 14.

21. The university has argued that the same approach should be adopted in this case, as to do otherwise would enable the campaigners to circumvent legitimate refusals of vexatious requests by submitting them over an extended period, yet still in a concerted fashion, particularly as the complainant had submitted two requests in the campaign period. However, the Commissioner recognises that part of the identity of the campaign was for requests to be made via the *whatdotheyknow.com* website, and his previous two requests were not made in that manner.

22. The Commissioner notes that the Tribunal (see paragraph 15) described the campaign as analogous with a Denial of Service Attack (DoS attack). It is clear that for a campaign of freedom of information requests to be characterised as a DoS attack, the requests must be submitted concurrently or simultaneously in such a way so as to prevent the recipient from functioning properly, if at all.

23. The Commissioner also notes that the five requests in this case were made between December 2010 and January 2011, 10 months after the time frame covered by the Tribunal decision. The Commissioner has found that the university received 25 requests from 11 individuals through the website *whatdotheyknow.com* in the period between the end of the campaign considered in his previous decision notices (February 2010) and the last of the five requests considered here (January 2011). The Commissioner does not consider that the complainant's five requests could be considered to be part of such a campaign based on timing alone.

24. The university argued that the decrease in the number of requests made after the Commissioner's decision notices shows that the campaigners modified their tactics. It has suggested that individuals who would have submitted further requests in pursuit of the campaign in early 2010 decided not to run the risk of having their request being added to the "*general pot of vexatious requests*". Therefore, the university maintains that "*allowing a reasonable lapse of time and using [complainant] to make the request (which could be presented as a request made of his own volition) appears to be yet another tactic to circumvent the 'vexatious request' criteria*." The Commissioner is not persuaded by this argument which essentially says that where a request has been framed and made in such a way so as to be considered reasonable to the public authority, this in itself makes it vexatious.

25. The Commissioner therefore went on to consider whether the five requests in this case were significantly similar to those considered to be part of the campaign. The dominant subjects of the requests in the campaign on which the Commissioner decided section 14 was applied correctly were:

- salaries over £60,000;
- travel to China;
- management retreats;
- expenses;
- specific members of staff and family members.

26. The complainant's five requests were for information on the following subjects;

- bullying and harassment by senior staff;
- complaints about senior staff;
- FOIA decisions overturned by the Commissioner;
- the advertisement by the university for legal services.

27. The Commissioner contends that whilst these requests may be linked to the dismissed individual and some of the topics on his blog, *Vagrants in the casual ward of a workhouse*, they are not sufficiently linked to the requests in the campaign. Accordingly, the Commissioner does not consider the five requests to be similar enough to the requests of the campaign to be considered to be part of that campaign.

28. Despite the complainant's undisputed links to the dismissed individual, the Commissioner has not found any conclusive evidence to suggest that the five requests being considered here were submitted as part of the campaign.

29. The university's evidence in this case relies heavily on the fact that the Commissioner and the Tribunal (see paragraph 15) have recognised the existence of a campaign whereby a group of individuals acted in concert making a large number of related freedom of information requests in a short time period. However, the Commissioner is not convinced that the campaign can be stretched out for a further 11 month period when only 25 requests, including those considered here, were received by the university from the *whatdotheyknow.com* website. Nor is he convinced that the subject matter of the complainant's requests is sufficiently similar to the subject of the campaign's requests. Finally, the complainant has clearly stated that he made the requests in relation to his own experiences with the university. Having considered all the relevant arguments the Commissioner is satisfied that they do not form part of the campaign.

30. As a result of this, the Commissioner asked the university for specific arguments in respect of the complainant's requests in isolation of the campaign. Consequently, he has gone on to consider the five tests described at the head of this section in more detail in relation to the requests on their own merit.

Consideration of the characterisation of the requests as vexatious on their own merit

31. At the Commissioner's request, the university provided its submissions for consideration of the complainant's requests as vexatious in their own right under the headings listed in paragraph 12.

Would compliance create a significant burden in terms of expense and distraction?

32. The university has argued that due to the complainant's known association with the dismissed individual and his two previous requests, it will need to respond to these requests with caution. The university therefore maintains that responding to the requests would be time consuming and would distract the head of information governance and senior colleagues from their duties.

33. The Commissioner is not convinced by this argument. Whilst the identity of requester can be relevant to considering whether a request is vexatious the Commissioner does not consider it is relevant to these specific arguments the University has made about burden and distraction.

34. There is no specific reference in the FOIA to the principle that the identity of the requester should be ignored, the absence of references in the legislation to it indicate that the FOIA is applicant blind. This

approach is endorsed by the Tribunal in S v Information Commissioner and the General Register Office [EA/2006/0030], *"FOIA is, however, applicant and motive blind. It is about disclosure to the public, and public interests. It is not about specified individuals or private interests."* As the information provided in response to the requests should be considered on the basis that they could have been made by any individual, the identity of the requester is not relevant when deciding whether or not to release information or what information should be provided. Consequently, the Commissioner maintains that compliance with the requests is unlikely to distract the head of information governance from his duties.

35. The Commissioner's guidance notes that *"if your main concern is the cost of compliance, you should consider section 12 rather than section 14".*

Are the requests designed to cause disruption or annoyance?

36. The university contends that the requests were designed to cause disruption and annoyance as it perceives them to be tendentiously framed. It views each request as inferring wrongdoing or incompetency by specific individuals at the university in relation to the complainant's beliefs that he has been the victim of bullying and harassment at the university, and that the university has lied about the situation.

37. The university notes that the complainant has taken up his bullying issue with the university council pending any further civil litigation, and argues that this shows that the requests are part of an overall attempt to *"cause ructions within the senior ranks of the university."* The complainant has informed the Commissioner that he has complained to the university council about the incident of bullying, but he believes that the university has ignored his complaint. In relation to this point, the university explained that its formal grievance procedure is not available to him as he is neither a member of staff nor a student. It therefore appears to the Commissioner that the complainant's concerns have not been fully addressed.

38. Three of the requests are clearly intended to explore the contentious and sensitive issue of bullying and harassment within the university and receiving such requests may annoy the recipient. However any such annoyance is likely to be caused by the pursuit of a seemingly sensitive subject, not the receipt of the request itself. The Commissioner finds that there is a clear distinction between any annoyance or distress caused by the prospect of disclosure of embarrassing, damaging or controversial information, and annoyance or distress caused by receipt of a vexatious request.

39. The complainant explained to the Commissioner that his experience of bullying at the university gave rise to his interest in the subject of bullying and harassment at the university. He directed the Commissioner to the Gus John report (2005) (which was concerned with equality and diversity at the university) and the GEM Report (2009) (which followed an impact assessment of the university's grievance procedure). Both reports said that there is a culture of bullying at the highest levels within the university and progress needs to be made to tackle the issues. The complainant has advised that both the reports and his own experiences led to his interest in information about bullying and harassment.

40. In view of the complainant's understanding of the bullying and harassment issues that the university has been dealing with for a long period of time, he is likely to recognise that requests about the subject may be considered annoying by the recipient and could result in the provision of controversial information. However, individuals are entitled to make controversial requests, or request information which they might reasonably expect would cause annoyance or disruption. This would only be relevant to any consideration of whether a request is vexatious if one of the main purposes of making the request was judged to be the causing of disruption or annoyance. This also relates to the 'serious purpose' argument, below.

41. The Commissioner finds no conclusive evidence that the requests are designed to cause any such disruption or annoyance.

Do the requests have the effect of harassing the public authority or its staff?

42. The university has stated that it believes that the complainant's requests are directed at specific members of staff, and that those individuals would undoubtedly feel harassed by the requests. However, the Commissioner notes that the members of staff in question are senior and he would therefore expect that they would expect a degree of scrutiny in the course of their employment at the university. Further to this, the Commissioner notes that with the exception of one request about the Deputy Vice-Chancellor, the complainant does not name specific individuals in his requests.

43. The university also maintains that the requests have an accusatory nature, implying wrongdoing and incompetency by specific individuals, which has a harassing effect on them. However, the Commissioner is of the view that the requests are phrased in a neutral manner and in the case of the requests about bullying and harassment information, they

appear to be broached in terms similar to those used in the Gus John and GEM reports.

44. The university argues that the accusations it perceives in the complainant's requests have a cumulative effect of placing undue pressure on the university and its staff which, it argues, amounts to harassment. As noted above, taking an objective reading of the requests, the Commissioner does not find the tone to be accusatory and in any event senior university staff should expect a degree of scrutiny from the public.

45. The Commissioner acknowledges that as a result of the complainant's known association with the dismissed individual, his requests have been viewed with some suspicion by the university. However the Commissioner is not satisfied that the complainant's five requests, taken in isolation, would have the effect of harassing the university or its staff and he is not satisfied that there is sufficient evidence to show that the requests should be considered in the context of other requests. When considered outside the context of the campaign and considered objectively, he does not find that the requests would have the effect of harassing the university or its staff.

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?

46. The university says it has classed the complainant's requests as obsessive and manifestly unreasonable due to the "*adversarial relationship between the university and [the complainant"*. The university also sought to rely on the complainant's two previous requests made in 2009 and 2010 which it maintains cover broadly similar topics, a subject access request (SAR) made by the complainant and the tendentious nature of the requests.

47. The Commissioner notes that one of the complainant's earlier requests covers the subject of the cost to the university of settling disputes with staff. However, he is not satisfied that similarity in subject matter to a request the complainant made over a year ago is sufficient to support the characterisation of the requests as obsessive. The Commissioner also does not consider the fact that the complainant made a SAR to the university demonstrates that the requests are obsessive. The SAR post-dates the freedom of information requests and is for different information than has been requested under the FOIA.

48. For these reasons, the Commissioner is not satisfied that the requests can reasonably be characterised as obsessive or manifestly unreasonable.

Do the requests have any serious purpose or value?

49. One characteristic of a vexatious request may be that it seeks to prolong or reopen a matter which has previously been dealt with, or otherwise lacks any intrinsic merit. Conversely, even if a request were to fulfil the four criteria considered above, if it nevertheless had a serious purpose, that might be sufficient to prevent it from being considered vexatious. This factor is therefore considered to be the principal element which a complainant may employ in mitigation of his position.

50. The complainant has outlined the nature of his interest in the information he has requested as relating to his own experiences of bullying and harassment at the university, as well as the issues highlighted in the Gus John and GEM reports. He has explained to the Commissioner that his complaint about the incident of bullying he experienced has not been dealt with by the university. The university has also acknowledged that the complainant cannot instigate a formal grievance through its grievance procedure. The complainant has therefore explained that he has requested the information "*in order to build a case to take to the appropriate authority*".

51. The Commissioner therefore agrees that the complainant has satisfactorily demonstrated a serious purpose behind his requests.

Conclusion

52. As set out above, the university put forward a number of arguments as to why it considered the complainant's requests to be vexatious, both when viewed as part of a campaign and when considered on their own merits. The university was of the view that the requests were unreasonable.

53. The complainant acknowledges that he has links to the dismissed individual to whom the campaign relates, but says he made his requests of his own volition in relation to his own experiences of what he considers to be bullying and harassment by staff at the university. The complainant has also indicated that his concerns have not been dealt with by the university and relate to an issue which has been the subject of two reports which have each said that there is a culture of bullying at the university.

54. The Commissioner accepts that the university has been subject to a campaign of freedom of information requests. However, due to the time that has elapsed between the end of the campaign and the complainant's requests and because the subject of the requests is different to that focussed on in the campaign, he does not consider these requests to be part of that campaign.

55. The Commissioner is of the view that the university wrongly assessed the complainant's requests as vexatious. It appeared not to consider the requests on their own merits and to be influenced by its relationship with the complainant and his known association with the dismissed individual.

56. In summary, the Commissioner is of the view that the university wrongly assessed the complainant's requests as vexatious.

Right of appeal

57. 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: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

58. 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.

59. 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 ……

Steve Wood
Head of Policy Delivery
Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1 The requests for information submitted by the complainant

On 11 December 2010 the complainant made the following four requests to the university:

1. *"Please provide details of the number of complaints against Dr (name redacted) outstanding as December 1, 2010. Complaints to include all disputes, grievances, complants [sic] what so ever that involve allegations of or the involvement of Dr (name redacted) in any manner. The number of complaints to include all complaints whether or not admitted or denied by the Univesity [sic] and/or Dr (name redacted). For the sake of clarity 'outstanding' means complaints not resovled [sic] or agreed to the mutual satisfaction of both the complainant and Dr (name redacted)/University of Salford."*

2. *"The manner (i.e. date and organ of publication (whether print media, internet, or another medium)) in which the University advertised any requirement for legal services in respect of which Heatons LLP were ultimately instructed by the University in the current financial year and the previous two financial years."*

3. *"Please provide details of the number of occasions in the last three years, 2008, 2009, 2010 in which the University have refused a request for information and have been overruled by the Commissioner either in full or in part."*

4. *"Please provide details of the following;*

   1) Number of times in the last two years, 2009 and 2010, that there have been written complaints containing allegations of bullying and/or abuse by Strategic Leadership Team (SLT) members in respect of staff, students and/or visitors.

   2) Detail number settled by mutual agreement.

   3) Detail number still outstanding.

   4) Details of number where not resolved by mutual agreement and
   University have not taken any action at all under their own disciplinary code?

   5) Please confirm there are no immunity polices that operate in respect of SLT."

60. On 5 January 2011 the complainant made the following additional request to the university:

5. *"I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail. My questions relate to the 3 year period from 1 January 2007 to 31 December 2009. By senior executive team I am referring to the 10 or so most senior staff within your institution.*
Q1 How many staff have asked for support or advice due to bullying or harassment at work ?
Q2 How many investigations have been made over allegations of bullying or harassment at work ?
Q3 In how many of the cases in Q2 was the perpetrator on a similar employment grade to the victim ?
Q4 In how many of the cases in Q2 was the perpetrator on a higher employment grade than the victim but not a member of the senior executive team. ?
Q5 In how many of the cases in Q2 was the perpetrator a member of the senior executive team ?
Q6 How many investigations have found that bullying or harassment at work has taken place ?
Q7 In how many of the cases in Q6 was the perpetrator on a similar employment grade to the victim ?
Q8 In how many of the cases in Q6 was the perpetrator on a higher employment grade than the victim but not a member of the senior executive team. ?
Q9 In how many of the cases in Q6 was the perpetrator a member of the senior executive team ?
Q10 What disciplinary or other follow up actions were taken as a result of those investigations ?
Q11 How much was spent on legal fees in relation to the above cases ?
Q12 How many staff have left the institution citing bullying or harassment as one of the reasons ?
Q13 How many staff have attended workshops or awareness sessions on bullying and harassment ?
Q14 Can you provide details of any other initiatives within your institution regarding bullying and harassment at work ?"