

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 January 2014

**Public Authority:** The Governing Body of Magdalen College  
**Address:** Oxford  
OX1 4AU

### Decision (including any steps ordered)

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1. The complainant made a freedom of information request to Magdalen College Oxford for information regarding the decision to stop using the UKCAT examination as part of the admissions process for the graduate entry medicine course. The College failed to respond to the request within 20 working days and the Commissioner found that the College breached section 10 of FOIA. However, the Commissioner also found that the College did not hold the requested information and therefore he requires no steps to be taken.

### Request and response

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2. On 4 September 2012 the complainant made the following freedom information request to Magdalen College ("the College"):

*I request Magdalen College state the date on which the College removed the UKCAT from the College's admissions process?*

*Please clarify why the UKCAT was removed from the College's admissions process?*

3. The complainant did not receive a response to the request.

## Scope of the case

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4. The complainant initially contacted the Commissioner on 3 March 2013 to complain that the College had failed to respond to his request for information. Following this the Commissioner wrote to the College to ask that it respond to the request. The case was then closed.
5. The Commissioner was contacted by the complainant again on 3 July 2013 to advise that he had still not heard from the College.
6. On 27 September 2009 the Commissioner contacted the College with details of the complaint. The Commissioner again directed the College to respond to the request which it did on 11 October 2013. It now informed the complainant that it did not hold any information falling within the scope of his request. This is disputed by the complainant.
7. The Commissioner considers the scope of his investigation to be to consider whether the College holds any information falling within the scope of the request. The Commissioner has also considered the failure of the College to respond to the request within 20 working days.

## Reasons for decision

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### Section 1 – Information not held

8. Section 1 of FOIA provides that a complainant who makes a request for information is entitled to be informed in writing if it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
9. In this case the College has informed the complainant that it does not hold the requested information. For the first part of the request it explained that it was one of 11 Oxford Colleges which admit for graduate entry medicine and that "it simply follows the University admissions procedure for the course". It explained that it was the University which directed it, along with the other colleges, to cease using the UKCAT and that it did so from the 2012 admissions. It commented, "The College did not itself decide to cease using the UKCAT; the decision was made by the University".
10. For the second part of the request it questioned whether this was a valid request for the purposes of FOIA. However, it said that if this was interpreted as a request for any information contained in any documents which explain why the University directed the 11 colleges to cease using

the UKCAT, then its response was that it holds no such information. It advised the complainant that such information may be available from Oxford University, a separate public authority.

11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
12. The College argues that the complainant's request and his reasons for believing the information is held are based on a misconception – that the College had itself decided to stop using the UKCAT examination. In support of this the complainant had said that he was aware that the decision to stop using the UKCAT had been discussed at two bodies; the College Tutors Committee and the Admissions Executive, both of which contained members of Magdalen College. Therefore, the complainant suggests that the College should hold minutes and other records of what was discussed.
13. In response the College said that the attendance of a member of a College at a University meeting does not mean that a decision taken at that meeting is a decision of the College nor does it mean that the College in question will hold papers of that meeting.
14. Nevertheless, at the Commissioner's request the College provided details of the steps it took to search for the requested information. It explained that it conducted a search of its documents for an explanation of the University's decision to cease using the UKCAT. It searched its electronic documents which it holds in its networked folders of undergraduate and graduate admissions documents using the search terms "UKCAT" and "bmat" (the test which replaced the UKCAT), since this is where it holds information pertinent to the admissions process for the courses it offers. The College confirmed that this search yielded no information explaining the decision to cease using the UKCAT.
15. However, whilst the College found that it held no information it did obtain, through requests to the University's Freedom of Information Officer and the Director of the Graduate Entry Medical Course, copies of minutes of two meetings which together explain the decision to cease using the UKCAT. These were provided to the complainant, outside of FOIA. It appears to the Commissioner that had this information been held by the College it would have fallen within the scope of his request.

Therefore the College's readiness to source this information from elsewhere and provide it to the complainant would lead the Commissioner to conclude that the College has acted with openness and has not sought to deliberately withhold any information, as alleged by the complainant.

16. The Commissioner has considered the arguments made by the complainant but he has seen nothing which would lead to him to conclude that the requested information is held by the College. Therefore, in view of the steps taken by the College to search for the requested information, and without any evidence to the contrary, the Commissioner has decided that the requested information is not held.

#### Section 10 – Time for compliance

17. Section 10 of FOIA provides that a public authority must comply with section 1 promptly and in any event within 20 working days. In this case the complainant made his request on 4 September 2012 yet the College did not respond until 11 October 2013 and only after prompting by the Commissioner. The considerable delay in responding to the request amounts to a breach of section 10(1) of FOIA.

## Right of appeal

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18. 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: [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)

19. 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.
20. 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, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**