

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2023

Public Authority: The Council of the University of Southampton
Address: University Road
Southampton
SO17 1BJ

Decision (including any steps ordered)

1. The complainant has requested information on the University of Southampton's mediation service. The University refused the request as it considered it was vexatious under section 14(1) of FOIA. The Commissioner's decision is the University was not correct to apply section 14 to refuse the request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request not relying upon section 14(1) FOIA.
3. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 19 July 2022 the complainant made an information request to the University of Southampton ("the University") in the following terms:

"Please provide information regarding your university's mediation service data as outlined in the following questions:

How many cases did your mediation service carry out each year during the last 3 years?

How many mediators does your mediation service presently have available to work on mediation cases?

Do your mediators mainly work alone or in pairs?

Are your mediators paid or volunteers?

What type of dispute do your mediators provide the service for? Please identify all that apply:

- Staff/staff disputes,
- Staff/student relationship disputes
- Student course related complaints
- Student/student accommodation disputes
- Student/student relationship disputes

Other types of dispute – please specify

How many students at your university have access to your mediation service?

How many staff working at your university have access to your mediation service?"

5. The University responded on 11 August 2022 confirming information was held. It stated it considered the request was vexatious as there was no apparent public interest in the information sought and it appeared to be made with the intention of furthering the commercial interests of the complainant. The University upheld this position following an internal review.

Reasons for decision

6. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious
7. The themes the Commissioner considers when deciding whether a request can be categorised as vexatious are: the burden (on the public

authority and its staff); the motive (of the requester); the value or serious purpose (of the request); and any harassment or distress (of and to staff). But those broad themes are not a checklist and are not exhaustive; the Commissioner takes into account all the circumstances in order to reach his decision.

8. The University stated that in its view there was no apparent objective public interest in the information that had been requested and that it appeared the request had been made to further the commercial interests of the complainant. The University considered that responding to the request would place a burden on it, in that staff would be diverted from their everyday roles to generate information the University has no business need to create for its own purposes.
9. The complainant argued that the statement that the request was for their commercial interests had been made with no basis and had only been made due to them using their business email address to make the request.
10. They further argued they had a genuine interest in the level of use of mediation within various public sector bodies as they suspected the take-up is lower than it could be and without the information that has been requested it was difficult to confirm this hypothesis. The complainant acknowledged they work in this field but stressed the information request was in the public interest and not their commercial interest. They say they actively promote and deliver mediation services and where its benefits are not being fully utilised they want to look into why that is.
11. The University, in its internal review response, reiterated that it considered the impact on the University of complying with the request outweighed any evidence about the purpose and value of the request. The University stated the request could be considered as having a commercial angle to it and therefore it was a misuse of FOIA to submit it. It further argued it was entitled to consider the motive of the request in this case and the work email address used to make the request indicated a commercial interest in the area of mediation.
12. The complainant had indicated they had submitted the same request to other Universities and had received the information. The University stated the decision of other Universities to comply is not a consideration in this case as the request has been considered on its own merits.
13. With regard to the complainant's comments on their interest in the subject matter, the University stated there was no requirement under section 14 of FOIA to carry out a public interest test but this was a consideration in the wider sense. The University argued the complainant

had confused 'public interest' with their own interest which they considered was commercial in nature. It argued the public interest in such matters means the public good, it is not what is of interest to the public or the private interests of the requester.

14. The University concluded by stating that due to the nature of the questions contained in the request, the admission that the same request had been submitted to other organisations, and the subject matter of the request, there was no public interest in this, just in the complainant's own commercial interest in gathering the information.
15. The University was invited to provide the Commissioner with any further comments on its position. The University maintained the request was vexatious. It added that to comply would have caused a disproportionate and unjustified level of disruption and the University judged evidence of the impact on it versus any purpose or value of the request. It argued it would have involved resource, staff time and diversion from other more organisation critical activities in order to comply with the request. It also argued that the matter being pursued was only for commercial gain and not for any public interest so responding to the request would have involved a disproportionate amount of resources for the value of the request.

The Commissioner's view

16. In the Commissioner's view, the University has fallen considerably short of demonstrating that the request was vexatious.
17. The Commissioner's guidance on section 14¹ states that a vexatious request will represent 'a manifestly unjustified, inappropriate or improper use of a formal procedure.'
18. Some requests will be clearly vexatious whilst other requests will be less clear cut. In all cases, the important question for a public authority to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
19. The request in this case is one made in isolation to the University so is certainly not excessive. The Commissioner is not convinced the request would be particularly burdensome – the information should be easily accessible as it relates to mediation services. The Commissioner does not consider providing details of the services offered and numbers

¹ [What does vexatious mean? | ICO](#)

relating to access to the service should be particularly time-consuming or onerous and the University has not provided any detail to support this position.

20. In terms of the argument that it would divert resources to respond to the request, the Commissioner notes that answering any FOIA request has the potential to divert staff from their day to day tasks for a brief period of time if they need to be consulted about a topic or have access to information that a FOI department need in order to compile a response. This does not automatically make a request unjustified or create a disproportionate level of disruption, particularly if there is a serious purpose or value to the request.
21. In this case whilst the University argues there is no purpose or value to the request beyond the complainant's commercial interest in the information, the Commissioner takes a different view. The complainant appears to work in an area linked to the information requested as can be seen from their business email address. The public authority can take into account factors such as this but the complainant has made it clear that his interest in this information is not solely commercial but comes from his genuine interest in the area and understanding how much mediation services are used, by whom and when. Beyond the complainant's interest in the information the Commissioner considers there is wider value in this information as it would provide insight into this area for anyone interested in using mediation services or highlighting that such services exist and are accessible and often used.
22. The Commissioner does not consider that it can be said that there is no serious purpose or value in this request. He is not convinced that this request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress and is thus not vexatious. The public authority must therefore issue a fresh response to the request.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Jill Hulley
Senior Case Officer
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