

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 September 2010

Public Authority: Queen Mary, University of London
Address: 327 Mile End Road
London
E1 4NS

Summary

The complainant made a request for information to Queen Mary, University of London ("the public authority") on 18 March 2010 for the number of students that were paid to delay accepting their place over three years. The public authority did not respond to his request because it believed the request to be vexatious and applied section 17(6) on the grounds that it had applied section 14(1) to a request made previously on 19 January 2010. The Commissioner has considered the background leading up to this request and has decided that the public authority correctly applied section 14(1) to the request for information. However, he also found that the public authority incorrectly applied 17(6) to this request within the context of the previous section 14(1) notice that had been considered by the Commissioner under reference FS50296057. As a result the Commissioner has found the public authority to be in breach of section 17(5).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Commissioner has been informed of the following by the public authority:

- That the complainant had been accepted by the public authority as a transfer student from another university;
- That this offer was based on certain conditions being met;
- That the complainant did not meet those conditions and the offer was withdrawn on 6 August 2008;
- That the complainant then appealed against this decision that he did not meet the relevant conditions;
- That he was informed in July 2009 that the public authority no longer accepted such transfers;
- That the complainant then appealed the public authority's decision in July/August 2009; and
- That the complainant's first FOI request to the public authority was made on 25 September 2009.

The Request

3. On 18 March 2010 the complainant made the following request for information:

'I would be grateful if QMUL would provide the following information with respect to QMUL paying students to delay taking up their offer of a place at QMUL School of Medicine and Dentistry.

- *Please state the number of students in receipt of such a payment for the years in each case (i.e. number of payments made):*
 - *(a) 2008-09;*
 - *(b) 2009-10;*
 - *(c) proposed payments for 2010-11.'*

4. No response was issued to this request by the public authority.

The Investigation

Scope of the case

5. On 29 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider this

request because he had not received any response. This Decision Notice focuses on the public authority's failure to respond to the complainant's request of 18 March 2010. However for the reasons outlined in the Analysis section below, in reaching his decision the Commissioner has also had to take into account the Commissioner's decision in case reference FS50296057 which deals with the complainant's request of 19 January 2010.

6. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

7. The Commissioner wrote to the public authority on 16 June 2010 to explain that he required assistance about understanding the public authority's position in respect to this case (in light of its possible connection with FS50296057).
8. Having received no such assistance, the Commissioner wrote to the public authority on 23 June 2010 outlining the fact that it had failed to respond to the complainant's request of 18 March 2010. He asked that a response was issued in ten working days. He also wrote to the complainant to confirm that this was what he had done.
9. On 10 August 2010 the complainant wrote to the Commissioner. He explained that he had still not received a response, despite the Commissioner asking the public authority to provide one.
10. On 17 August 2010 the Commissioner wrote to the public authority to explain that a response had not been received and asked it to explain its position.
11. Later that day, the public authority provided an explanation. It explained that it had not issued a response to this request because it believed that it was excluded from the obligation to do so by virtue of section 17(6). It explained that it considered section 17(6) was applicable since it had already issued a refusal notice under section 14 of the Act on 11 February 2010 to a previous request made by the complainant.
12. On 6 September 2010 the complainant wrote to the Commissioner to confirm that he was still waiting for a response.

Analysis

Procedural Matters

Section 14

13. Section 14(1) of the Act states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

The full text of section 14 is available in the Legal Annex at the end of this Notice.

14. The Commissioner’s approach is outlined in his guidance entitled ‘Vexatious or repeated requests’¹. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:

- it would create a significant burden in terms of expense and distraction;
- it is designed to cause disruption or annoyance;
- it has the effect of harassing the public authority;
- it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
- it clearly does not have any serious purpose or value.

15. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130):

“a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach...”
(paragraph 20).

¹ Found

at: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

16. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) at paragraph 11 stated that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
17. In *Gowers v Information Commissioner* (EA/2007/0114), the Information Tribunal noted that when considering section 14:

"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one"
18. In doing so the Commissioner can therefore consider the context and history of a request in addition to the request itself in relation to one or more of the five bullet points listed in paragraph 14.
19. The Commissioner has considered the public authority's arguments in support of the request it refused on 19 January 2010 under section 14(1). This led to its decision to apply section 17(6) regarding the 18 March 2010 request. In doing so the Commissioner has taken note of the correspondence and contact between the complainant and the public authority from July 2009 up to the date when the requests were deemed vexatious.

Can the request fairly be characterised as obsessive or manifestly unreasonable?

20. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable?
21. In assessing whether a request can be deemed obsessive or manifestly unreasonable, a public authority may take into account previous knowledge it has of the requestor as well as previous grievances, disputes or complaints involving the requestor (see paragraph 17).
22. The public authority has explained that the complainant's "grievance" has been fully investigated. Although his appeal has been completed the complainant has continued to email members of staff and submit FOI requests. This request in itself may not be vexatious but seen in the context of the number of emails sent and external people copied in the public authority has argued that this alters its complexion.

23. The public authority has asserted that many of the complainant's emails are long and accusatory, though many of these are not FOI requests they are intertwined with them. The emails sent by the complainant relate in detail to policies and/or procedures. These emails also reference previous emails which have been pasted onto the new emails in an obsessive and repetitive manner. Similarly the complainant replies to an FOI response, sometimes straight away, with supplementary requests or accusations. The public authority states that the complainant has exhausted every avenue of appeal. By this the public authority would appear to be referring to the fact that, although the complainant only had recourse to the public authority's internal system of appeal as his status was pre-student, it was aware that the complainant had appealed against his previous university (see Background).
24. The public authority does not believe that any information had been withheld from the complainant prior to the decision to apply section 14, other than some incorrect information that was sent as the result of a misunderstanding as to what the request alluded to. The complainant has accused the public authority of deliberately withholding information though the public authority has stressed that the offer of a place was conditional and withdrawn legitimately.
25. The Commissioner notes that a factor in considering whether a request is vexatious can in some circumstances, be the person who is making it. This is illustrated in the Tribunal comments in *Welsh & the Information Commissioner* (EA/2007/0088) "...it is possible for a request to be valid if made by one person, but vexatious if made by another, valid if made to one person, vexatious if made to another..." (paragraph 21) and similarly in *Gowers & the London Borough of Camden* at paragraph 29 "...it is not only the request itself that must be examined, but also its context and history".
26. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. In this case, taking into account the context and background to the request, and the fact that the complainant's grievance had been fully investigated and the appeal process completed prior to the request of 18 March 2010, the Commissioner considers that the request can fairly be seen as obsessive.
27. In this case, the Commissioner is persuaded by the public authority's argument in its application of section 14(1) previously that the complainant's persistence would appear to be based on a grievance which could be classed as obsessive when placed in context. In view of this he accepts the public authority's contention that it has tried to

comply with the complainant's previous requests but that the volume of requests and correspondence has become obsessive.

Would the request have the effect of harassing the public authority?

28. The complainant has been contacting members of the public authority's staff – the public authority estimates the figure at 22 - over several months from July 2009. At least 16 outside parties have been copied into these emails. The public authority has suggested that this may be an attempt by the complainant to elicit some contradiction or admission of error upon which to seize. The public authority also estimates that 37 emails were sent between July and November 2009 alone and these figures do not include FOI requests or follow-ups. Ten FOI requests had been submitted prior to 19 January 2010 plus many follow-ups which were not treated as new requests. Some members of staff have been distressed by accusations of discrimination and threats of legal action by the complainant. Additionally two members of the public authority's staff have professed the view that they consider these emails to be harassment.
29. The Commissioner considers that the public authority has provided enough evidence in terms of the complainant's proliferation of emails and requests to members of staff, to indicate strongly that the requests and correspondence had the effect of harassing the public authority at the point at which this request was sent on 18 March 2010. Furthermore, taking into account the fact that every appeal avenue open to the complainant seems to have now been exhausted, for example, the grievance had been fully investigated and the appeal completed prior to the request on 18 March 2010, the Commissioner considers this request to be a continuation of the complainant's focus on the refusal to be accepted into the public authority's medical school. This attempt to keep reopening the issue did have the effect in the Commissioner's view of harassing the public authority.

Would complying with the request create a significant burden in terms of expense and distraction?

30. The public authority has made no claim regarding whether complying with this request would create a significant burden in terms of expense and distraction as it has not engaged with the request at all, relying on section 17(6).
31. As a result, the Commissioner has not considered whether this request for information would or would not create a significant burden in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

32. The public authority believes that the requests are "*ultimately designed for these purposes though only in part*". In other words the public authority has found that some responses to requests have supplementary questions asked months later. Other requests have been "frivolous" and an example was provided of asking for the Principal and other members of staff's registration details with the GMC. Although the public authority has used the term "frivolous" the Commissioner is looking at whether the request is "vexatious".
33. The Commissioner considers that there is insufficient evidence to establish whether the request was designed to cause disruption or annoyance. The fact that some requests prior to this request have been considered to be frivolous or annoying is a matter of interpretation and does not lead the Commissioner to conclude that the request of 18 March 2010 was designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

34. Many of the requests and emails that preceded this request were designed to build a case or show that a policy was not in place, or that a procedure was not being followed.
35. Although this request for information would appear to be part of the same pattern, the Commissioner cannot conclude that this request lacks serious purpose or value.

Conclusion

36. As explained previously it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner considers that there are sufficient grounds to justify upholding the application of section 14(1) on the basis of the two factors mentioned above. The Commissioner is satisfied that, when taken in the context of previous correspondence, the cumulative effect of the requests was vexatious by the point at which the request for information was made on 18 March 2010. He also accepts that, though the complainant had a serious purpose in making this request, this was outweighed by the fact that his previous requests had already had the effect of harassing the public authority. The Commissioner accepts the assertion that the quantity and frequency of communications made by the complainant could be construed as obsessive.

Section 17

37. For the full text of section 17 see the Legal Annex.
38. Section 17(5) provides that when a public authority "is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact".
39. Section 17(6) states that:
- "(6) Subsection (5) does not apply where-
- (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
40. The Commissioner accepts that the public authority had issued the complainant with a notice in accordance with section 17(5) regarding the request made on 19 January 2010 stating that it considered section 14(1) applied. His decision in that case under reference FS50296057 was that the public authority correctly applied section 14(1) to that request for information. The Commissioner considers that it would not, in all the circumstances, be unreasonable for the public authority to have issued a section 17(5) notice with regard to this request for information as the complainant had not been advised when the section 14(1) notice was applied to the 19 January 2010 request that any request of a similar nature or on a similar topic would be likely to be treated as vexatious.

The Decision

41. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- (i) He has concluded that the public authority correctly applied section 14(1) in relation to the request

42. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

(i) He has concluded that the public authority should not have applied section 17(6) in relation to the 18 March 2010 request, despite the previous application of section 14(1) which has been considered by the Commissioner under reference FS50296057.

(ii) As a consequence the public authority breached the requirements of section 17(5) by failing to issue a refusal notice informing the complainant of its reliance on section 14(1)

Steps Required

43. The Commissioner requires no steps to be taken.

Right of Appeal

44. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of September 2010

Signed

**Rachael Cragg
Group Manager Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

General right of access to information held by public authorities

Section 1 of the Act provides that:

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

Section 14

Vexatious or repeated requests

Section 14 of the Act provides that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Section 17

Refusal of request

Section 17 of the Act provides that:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.