

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2012

Public Authority: Council for the Curriculum Examinations and Assessment

Address: 29 Clarendon Road
Clarendon Dock
Belfast
BT1 3BG

Decision (including any steps ordered)

1. The complainant requested information regarding communications with respect to the summer 2011 GCE mathematics papers and in particular question 4 of the mechanics M2 paper. He also requested a copy of the expert's report which followed the review of statistics papers in 1998-2002. He explained that he understood that this contains three recommendations which were made following the review, but, if not, he required the document which does contain these recommendations. The Council for the Curriculum Examinations and Assessment ("CCEA") refused to deal with this request on the grounds that it was vexatious (section 14).
2. The Commissioner's decision is CCEA has incorrectly relied on section 14(1) in this particular case.
3. The Information Commissioner requires CCEA to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request for information as required by section 1(1) of the FOIA. CCEA must either comply with section 1(1) of the FOIA or issue a valid refusal notice complying with section 17(1) of the FOIA.

4. CCEA 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 the FOIA and may be dealt with as a contempt of court.

Background

5. The complainant was first in correspondence with CCEA about a mathematics issue in relation to GCE 'A' level statistics papers in 1998. CCEA has explained that his concerns centred on two main issues: errors he considered existed in statistics papers and the level of expertise and competency of the mathematics examining team engaged by CCEA. This period of correspondence lasted for 4 years: 1998-2002.
6. As a result of the concerns raised an external investigation was undertaken. This investigation considered the issues raised regarding the statistics 'A' level questions only; it did not consider the complainant's criticisms of the internal procedures of CCEA. Its findings were presented in a report dated April 1999 (the "Goodall Report"). Following this report, CCEA issued guidance to schools taking CCEA examinations.
7. In October 2011 the complainant raised concerns about what he considered to be an error in an 'A' level mechanics paper and challenged the competency of members of the mathematics examining team.
8. In its correspondence to the complainant (letter dated 14 December 2011) CCEA argued that all the recommendations of the Goodall Report had been implemented. However the complainant has argued that the interim Chief Executive of CCEA has misrepresented the recommendations of the report.
9. For this reason in addition to the communications regarding the 2011 mechanics paper, the complainant requested the Goodall Report or the document which contains the three recommendations as quoted by CCEA. He also requested the guidance issued to schools, referred to by CCEA in its correspondence.

Request and response

10. On 20 December 2012, the complainant wrote to CCEA and requested information in the following terms:

'I would like to request copies of:

- *All external communications that CCEA have had in connection with the summer 2011 GCE Mathematics papers.*
- *All communications which relate to question 4 of the Mechanics M2 paper, including (but not limited to) all external contacts, internal emails, notes of meetings and telephone conversations, including handwritten notes.*
- *A copy of the expert's report you referred to in writing to me recently (see below), and the guidance for schools referred to. It is not clear from what you say that the expert's report actually contained these recommendations: if not then I would like a copy of whatever document contains these three recommendations.*

Your letter to me dated December 14th 2011 says:

"As you will be aware when issues were raised during the period 1998-2002 CCEA commissioned an independent expert to review statistics papers and provide CCEA with a detailed report. The review resulted in three recommendations.

They were:

- A strengthening of the examining team;*
- The production of guidance for schools on the teaching and assessment of statistics at A level; and*
- Greater rigour related to the issue of past papers.*

All of these recommendations were implemented."

11. CCEA responded on 12 January 2012. It refused to disclose the information requested under section 14(1) of the FOIA and applied this exemption to the information requested in the complainant's correspondence of 10 December 2011 and 16 December 2011 in addition to the request of 20 December 2011.
12. Following an internal review CCEA wrote to the complainant on 10 February 2012. It upheld its application of section 14(1) of the FOIA.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way his request for information had been handled.

14. He has confirmed that he no longer requires a copy of the Goodall Report. However he still requires the document which contains the recommendations which followed the review of the statistics papers in 1999.
15. Prior to the complainant's request of 20 December 2011, he had asked CCEA to explain the assumptions that it was necessary for a candidate to make it order to answer the specific question under discussion (in letters dated 10 and 16 December 2011). In his complaint to the Commissioner, the complainant explained that he did not consider this to be an FOIA request and argued that by refusing it under section 14(1), CCEA had avoided providing a response to it.
16. The Commissioner does not consider that the requests for an explanation of the assumptions behind the questions (as contained in the letters of 10 December 2011 and 16 December 2011) are FOIA requests as the complainant is not seeking recorded information. For this reason the questions contained in these letters and the way in which CCEA responded to them are not included in the scope of this case.
17. The Commissioner has considered whether CCEA's application of section 14(1) to the information request of 20 December 2012 was correct.

Reasons for decision

18. Section 14(1) provides that a public authority is not obliged to comply with a request if it is vexatious.

The Commissioner's published guidance¹ on section 14(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;

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

- 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; and
 - whether the request has any serious purpose or value.
19. It is not necessary for all five factors to be engaged, but the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
20. The Commissioner has therefore considered arguments put forward by CCEA and the complainant, partly in light of the five tests set out above, but also in light of the Information Tribunal's view that a consideration of a refusal of a request as vexatious may not necessarily lend itself to an overly structured approach². He has therefore considered these tests 'in the round'.

Could the request fairly be seen as obsessive?

21. CCEA has explained that the mathematics examining team does not agree there was an error in the June 2011 examination and considers that the question was valid and answerable.
22. CCEA has argued that the current request is an attempt to reopen issues from 1998-2002 and has cited arguments made in the complainant's letters which refer to back to the events of that period. It considers that the complaints he presented then and those he is raising now are similar. CCEA argues that the complainant has not previously asked it for the school's guidance report and it can see no benefit in reopening an issue which was closed approximately 10 years ago.
23. CCEA has also argued that the volume of requests it has received from the complainant demonstrates unreasonable behaviour. CCEA has explained that between 14 October 2011 and 12 January 2012 it received 7 letters from him. The main points raised in the correspondence are summarised in Annex 1.
24. The complainant has argued that he is not seeking to reopen any issues from 1999; the question on the June 2011 paper which is the subject of

² *Coggins v the Information Commissioner (EA/2007/0130)*

this request is a mechanics question and is a completely separate and unrelated area of mathematics to statistics.

25. He has also argued that that the Goodall Report criticised the examining team and it is therefore relevant whether or not the current Chief Examiner and Chief Reviser were part of the senior examining team for mathematics in 1998 when he made his last complaint. The complainant does not consider that the recommendations of the Goodall Report were accepted by CCEA and for this reason he has referred to past events and questioned the competence of the examining team.
26. The complainant has also stated that although CCEA argued he was the only person to raise concerns about the statistics questions this was not the case. He argues that other schools also complained. He does not consider that CCEA properly addressed the issues raised in 1999.
27. The Commissioner is aware that although the current complaint concerns a different area of mathematics, the issues the complainant is raising are related to those considered 10 years ago and CCEA considers it has dealt with them.
28. However it is apparent the complainant is concerned with the implementation of recommendations made in 1999 and with the specific exam question in 2011. The complainant did not submit any requests to CCEA between 2005 (when the FOIA came into force) and 2011. It would therefore appear that he let the matter drop in the intervening years.
29. The Commissioner has also considered the complainant's correspondence and whilst it would appear likely to vex CCEA, the Commissioner does not find that the volume is sufficient to indicate an obsessive request.
30. The Commissioner therefore considers that this request does not fulfil the criteria to be deemed obsessive.

Is the request harassing the authority or causing distress to staff?

31. CCEA has argued that the hostile and abusive nature of the correspondence caused its staff to feel pressured and stressed. It has quoted specific examples from the correspondence to demonstrate that the complainant is questioning the competence of officials and calling for the resignation of the interim Chief Executive.
32. Given the circumstances of the request and its past history, the Commissioner considers that the effect of the request is likely to harass CCEA.

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

33. The guidance states that this question must consider whether responding would divert or distract staff from their usual work.
34. The Information Tribunal³ has said that the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor in deciding whether a request is vexatious.
35. CCEA has argued that between 1998 and 2002 the complainant wrote on average one letter per month as well as writing to the Department of Education, the then Qualifications and Curriculum Authority and various professional bodies and local and national media, whilst the issue was still under consideration by CCEA. It estimated that correspondence received by CCEA during that period exceeded 100 letters, either directly from the complainant or as a result of letters written by him to other bodies or individuals.
36. Whilst the Commissioner understands that this indicates a pattern of behaviour which may be repeated in relation to the current complaint, he notes that the correspondence ceased in 2002 and the complainant did not write again before 2011. Bearing this time gap in mind, the Commissioner has not taken this previous pattern of behaviour into account in this instance.
37. CCEA has argued that 13 senior members of staff have been involved in addressing the issues raised by the correspondence received in 2011 and that this is diverting staff from their normal duties. This has involved conducting a number of reviews of the points raised:
 - by CCEA's mathematics education manager;
 - at internal meetings;
 - by the senior mathematics team;
 - by 4 mathematics practitioners from 4 schools; and
 - by a professor of mathematics at a local university.
38. Whilst the Commissioner appreciates that CCEA has many duties and that the officers involved in the above reviews would of necessity be diverted away from their other work, he would consider that dealing with a complaint about an exam paper is a core function of CCEA.

³ *Gowers v the Information Commissioner & the London Borough of Camden* (EA/2007/0114)

39. In addition, this criterion is concerned with the burden imposed in complying with the request, not the complaint to CCEA. The request itself would not appear to be a burden to CCEA and it has not provided any evidence to suggest that excessive work would be involved in responding to this request.

Is the request designed to cause disruption or annoyance?

40. It is apparent that the complainant considers there is a serious purpose behind the request and CCEA has not argued that it is designed to cause disruption or annoyance. Therefore the Commissioner does not consider that the request is designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

41. CCEA has argued that the complainant has not given its staff or an independent investigation team sufficient time to fully consider the issues raised by his concerns.
42. It has argued that the complainant is not prepared to accept the opinion of CCEA and its contracted teaching professionals. It has argued that it is regulated by CCEA Regulation and in addition, the CCEA Awarding Body is accountable to a number of independent bodies:
- The Department of Education, Northern Ireland ("DENI");
 - NI Assembly Education Committee;
 - Ofqual;
 - CCEA Regulator; and
 - The Examinations Appeals Board.
43. The Commissioner also notes that the complainant has confirmed that he has written to the NI Minister for Education about this issue.
44. On 5 December 2011 the Department of Education Assessment and Qualifications Team informed the complainant that it had asked the Examinations Regulator to initiate an independent investigation into the appropriateness of the question.
45. CCEA has explained that an independent review was therefore commissioned by its regulator. It explained that CCEA Awarding Body is regulated by CCEA Regulation which is part of a three country regulatory agreement with the Office of Qualifications and Examinations Regulation ("Ofqual") in England and the DfES in Wales. The complainant has explained that the regulatory reports were commissioned on 18 January 2012.
46. CCEA has explained that the evidence of the regulatory investigation undertaken by Ofqual clearly establishes that the impact of one part of

one question in a single mathematics paper was not significant enough to have caused any disadvantage to a candidate sitting the paper.

47. The Commissioner understands that DENI is satisfied with these reports. CCEA has accepted that the question could have been better framed and has explained that it will not use the question again for examination purposes. However, the complainant is not satisfied that the reports are sufficiently independent.
48. In making the decision on this case the Commissioner can only consider the response of the public authority at the time a request was made. In this case the complainant's request was made to CCEA on 20 December 2011. At that point in time DENI had asked CCEA to conduct an independent report but the investigations into the paper had not been completed.
49. CCEA has argued that the complainant did not give it sufficient time to fully consider the issues he had raised. However the Commissioner does not consider this to be significant to this case. It is apparent that when the complainant made his request he had serious concerns about the relevant question and wished to confirm whether CCEA was being fully transparent in its consideration of the issues he had raised. He is also concerned about the implementation of the recommendations made in 1999.
50. The request is undoubtedly related to past events. However the Commissioner considers that it has a serious purpose with regard to the 2011 exam.

Conclusion

51. Although the request could be viewed as likely to harass CCEA and is related to an old complaint, the Commissioner is satisfied that at the time the request was made the issues the complainant had identified were of sufficient concern to accord them a serious purpose. In addition the volume of correspondence up to the time of the request does not support the argument that the request is vexatious. There is also no evidence that providing the requested information would pose a significant burden to CCEA.
52. For the reasons given above the Commissioner considers that CCEA was incorrect to refuse to comply with the request on the basis of section 14(1) of the FOIA.

Other matters

53. The Commissioner is aware that while he does not consider the current request to be vexatious, the complainant has continued to correspond with CCEA and has now submitted a request concerning the summer 2012 mathematics papers. CCEA considers the complainant wishes to discredit the organisation and in particular the mathematicians who form the senior examining team for the subject. CCEA considers this to be the complainant's sole purpose.
54. CCEA has now allocated a single point of contact for the complainant; however he has continued to attempt to communicate with different members of staff and copies correspondence addressed to the interim Chief Executive to other colleagues. CCEA considers his correspondence to be harassing, distressing and intimidating.
55. Whilst the Commissioner does not consider that the request of 20 December 2011 is vexatious, he wishes to draw the complainant's attention to his guidance⁴ which explains how he decides whether a request is vexatious or not.
56. As part of this request, the complainant has asked for the guidance issued to schools, as referred to by CCEA in its correspondence. During the course of this investigation, it has come to the attention of the Commissioner that the complainant and CCEA have different dates in mind with respect to the requested guidance. The complainant considers the guidance was issued in 2000 whereas CCEA has referred to guidance issued in 2002. Should this case result in CCEA providing information to the complainant, this discrepancy will need to be resolved between the two parties.

⁴http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

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

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

Annex 1

Summary of requests between 14 October 2011 and 12 January 2012

- 1. 14 October 2011 the complainant to CCEA (the interim Chief Executive)**
 - Error in question 4 of Mechanics 2 Module June 2011.
 - Call for an independent external enquiry.
 - Request for confirmation that the Chief Examiner and Chief Reviser who were in post in 1998-2002 are not still in post.

- 2. 11 November 2011 CCEA (Business Assurance Manager) to the complainant**
 - The answer required candidates to make assumptions that should be reasonably made at this level.
 - There was no error.
 - CCEA has robust procedures for the development and quality assurance of papers.

- 3. 17 November 2011 the complainant to CCEA (the interim Chief Executive)**
 - Repeat of question as to whether the senior examining team are the same as the team in post in 1998-2002.

- 4. 17 November 2011 the complainant to CCEA (Business Assurance Manager)**
 - Dissatisfaction with assumptions made.

- 5. 10 December 2011 the complainant to CCEA (the interim Chief Executive)**
 - Dissatisfaction with assumptions to be made and with response regarding the senior team.

- 6. 14 December 2011 CCEA (the interim Chief Executive) to the complainant**
 - Confirmation that the senior team is not that same team that was in post in the late 1990s.
 - Confirmation that the issues raised in 2002 were considered by an independent expert who review the papers and made recommendations which have been implemented.
 - CCEA conducted an internal investigation into the issues which arose from the 2011 examinations. The report was published on the CCEA website.
 - Separately, an independent review of all the Awarding Bodies was carried out by Ofqual on behalf of the regulatory authorities.

- 7. 14 December 2011 CCEA (Business Assurance Manager) to the complainant**
 - List of assumptions the examiners expected the candidates to make.
 - Review of questions to be undertaken by a group of 4 mathematics practitioners and a professor from a local university.
 - Confirmation that the Department of Education has asked CCEA to initiate an independent investigation into the appropriateness of the question.

- 8. 16 December 2011 the complainant to CCEA (the interim Chief Executive)**
 - Outside examiners should remark the June 2011 scripts.
 - January's papers should be reviewed by independent examiners.
 - Schools should be notified that the question should not be used in preparation for the M2 module.

- 9. 16 December 2011 the complainant to CCEA (Business Assurance Manager)**
 - Concerns about consultations.
 - Criticisms of assumptions that need to be made in order to answer question.

- 10. 20 December 2011 the complainant to CCEA**
 - Current freedom of information (FOI) request.

- 11. 21 December 2011 the complainant to CCEA**
 - Regarding CCEA's failure to adequately respond.

- 12. 12 January 2012 CCEA to the complainant**
 - Response to FOI request.

- 13. 17 January 2012 the complainant to CCEA**
 - Request for internal review.