

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2014

Public Authority: The Governing Body of the Manchester Metropolitan University

Address: All Saints
Manchester
M15 6BH

Decision (including any steps ordered)

The complainant made a request for information relating to her previous complaint about the Manchester Metropolitan University's (MMU) decision letter to her dated 13 May 2009. MMU refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that MMU has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Background

1. The complainant is a former student of MMU who withdrew from the University in 2003 following a dispute. After extensive litigation, the complainant was barred by the High Court from pursuing any further litigation via a Vexatious Litigant Order. In 2009, the complainant asked the MMU to consider her for further study and this was declined. Since then, the complainant has contacted MMU and other organisations to try to force the MMU to revoke this decision. The three previous FOIA requests to MMU have been refused as vexatious.

Request and response

2. On 13 November 2013 the complainant made a lengthy request to MMU under the FOIA which is reproduced in full in the Annex and summarised below:

- that the Charity Commission give authority to HEFCE to consider her complaint about MMU's decision letter to her dated 13 May 2009
 - for the Part 2 grant letter to MMU of the HEFCE's Financial Memorandum
 - for data about student complaints from May 2009-October 2013.
3. The MMU responded on 10 December 2013, stating that it considered the request to be vexatious and therefore covered by section 14(1) of the FOIA. The response referred to MMU's letter of 18 August 2010 which stated '*we consider the matters you raise to be closed*' and MMU's letter of 30 January 2013 which advised that the University considered the requests to be vexatious. MMU's position with regard to the latest communication remained unchanged.

Scope of the case

4. The complainant contacted the Commissioner on 11 December 2013 to complain about the way her request for information had been handled.
5. The Commissioner has examined the request and related correspondence from both the complainant and the MMU. The Commissioner has considered whether the MMU is entitled to rely on the vexatious provision at section 14(1) of the FOIA

Reasons for decision

6. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
7. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of

¹ GIA/3037/2011

proportionality and justification are relevant to any consideration of whether a request is vexatious.

8. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

9. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
10. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
11. The MMU identified several indicators as being present within the request. It considered that the request was obsessive, unjustified, without merit or value, an improper use of the FOIA and was designed to cause disruption or annoyance to MMU.

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http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

The request is obsessive

12. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
13. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
14. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
15. In this case, MMU stated that the complainant had made numerous, unsuccessful complaints about the same issues to MMU and other external bodies following the MMU decision in 2009 to decline to consider the complainant for further study. MMU stated that between 2009 and 2013 there were 12 complaints to external organisations about MMU and its staff, 3 subject access requests under the Data Protection Act to MMU, 5 requests for information to MMU under FOIA (the last 3 refused as vexatious), and 3 attempts at legal action.
16. MMU has stated that this request for information, *'when considered in the wider context of the history, frequency and nature of communications ... is clearly part of a long-standing and relentless challenge to a University decision in 2009.'*
17. The MMU provided the following as an example of the obsessive language used by the complainant in an email dated 19 August 2010:

'I, [alike the Lord Jesus Christ of Nazareth that was crucified for doing nothing wrong, although I will not be crucified] – must have been doing something right, because you show your contempt...'

Since then, MMU have managed the communications with the complainant centrally.

18. The Commissioner has taken into account the context and background to the request in conjunction with the language used in previous correspondence to MMU and considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

The request is without merit or value

19. MMU provided examples from the current request that the request is without merit or value:

'To ask the Charity Commission for "written authorisation...to institute Charity proceedings at a Court involving MMU". This purpose is without merit or value, as the requester is a Vexatious Litigant, subject to a s42 Order, and is barred from all legal action in England and Wales'

'To ask HEFCE to investigate the requester's complaint against MMU, regarding its 2009 decision: "I am once again, requesting that the HEFCE [as the regulator and major funder for exempt charity-MMU], ...considers my complainant about MMU's 13/05/09 decision letter to me." This purpose is without merit or value, as the requestor had been advised by HEFCE, the day before (12/11/13) that "it is not within the remit of the HEFCE to become involved in admissions matters..." The requestor refused to accept HEFCE's decision, instead used an FOI request as an attempt to force the issue to be reopened.'

20. The Commissioner has considered all the correspondence presented to him and found that there is sufficient evidence to suggest that the request was vexatious in that it was futile and the issue has already been conclusively resolved by the authorities involved.

It has the effect of harassing the public authority.

21. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
22. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.

23. In this case, the request is the pursuit of a highly personalised complaint with clear aims proposing that MMU *'reconsiders its 13/5/09 decision letter to me...offers a written apology...award a retrospective Degree ... and financial compensation.'*
24. MMU state that the use of FOIA in this case has *'been designed to disrupt, annoy and pressure the University into revoking its decision/awarding recompense. When considered against the context and history of related requests from the applicant, this has imposed a significant burden upon the University ... in terms of expense and distraction over the years from 2009 to date.'*
25. The Commissioner has considered the purpose of the request in the context of the other correspondence and taking into account the obsessive persistence of the complainant's requests, finds that the effect is to harass and annoy the public authority.

The Commissioner's decision

26. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that the MMU was correct to find the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request is obsessive and had the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

27. 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

28. 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.
29. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Dear (names redacted),

Thank you for your replies below.

Prior to the Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2010 No. 501, and The Charities Act 2006 (Changes in Exempt Charities) Order 2010, The HCFCE was the principal funder of MMU [and thus had/has a regulatory remit]-prior to 2010. In 2009/10/11/13 I emailed (name redacted)'s Secretary and MMU's Legal Department about my complaint;-and the legal Department told me that they will not consider my complaint under MMU's Complaints Procedures.

(name redacted), in view of you below emailed decision, I am asking that The Charity Commission/ers gives me written authorisation, [if appropriate, and in pursuance of sections 15(2)(3), 33(2)(4)(5), and 96(1), of the Charities Act 1993],- to institute Charity proceedings at a Court involving MMU.

(names redacted), the HEFCE's Financial Memorandum 2009/19 states amongst other things:

'...Institutions are bound by the requirements of their charter and statutes (or equivalent) and by rules relating to their charitable status. This document does not supersede those requirements but is intended to complement and reinforce them....'

HEFCE will be obliged in exceptional cases to use its powers and consider all relevant options to ensure that governing body members discharge their duties under this memorandum and as trustees. ...'

Therefore, I am once again, requesting that the HEFCE [as the Regulator and major funder for exempt charity-MMU], and/or MMU's Trustees &/or Board of Governors-[pursuant to MMU's Student Charter, Statutes, and Complaints Procedures, Human Rights, Race Equality duties, Equal Opportunity Policies, and Anti-Discrimination ,laws],- considers my complaint about MMU's 13/05/09 decision letter to me. [Please note MMU, that a Judge at Court will consider the issue of whether to award costs or not in terms of a party not conducting themselves to alternate complaint resolution mechanisms such as a Complaints Procedure, Mediation, or Arbitration.]

And, pursuant to the Freedom of Information Act 2000 [or otherwise], I ask the following questions to the HEFCE and MMU:

q.1] Please supply me with:

a] Part 2 grant letter to MMU of the HEFCE's Financial Memorandum-(Part 2 is issued each year as the 'grant letter' that gives conditions specific to each institution, a schedule of funds available in the academic year, and the educational provision the institution has agreed to make in return for those funds). And,

b] the numbers, types, and outcomes, of all complaints [by prospective, past, and current, students]-to the HEFCE and MMU, about MMU, [that supplied information must be from May 2009 to October 2013]?

Please note, in 2010, I also sent an email to MMU, -the email requested a review of MMU's 2010 FOIA response letter;- I can't find that email but I think that MMU recites my 2010 FOIA questions- in MMU's letter of the 31/01/13 to me].