

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2021

Public Authority: The Council of the University of Cambridge

Address: University Offices
The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested information associated with 'Cambridge Zero'. The University of Cambridge ('the University') has categorised the request as vexatious under section 14(1) of the FOIA and has refused to comply with it.
2. The Commissioner's decision is as follows:
 - The request can be categorised as a vexatious request under section 14(1) of the FOIA because of the disproportionate burden that complying with it would cause the University.
3. The Commissioner does not require the University to take any remedial steps.

Background

4. Cambridge Zero is the University of Cambridge's interdisciplinary and collaborative initiative. It was created "to harness the full range of the University's research and policy expertise, developing solutions that work for our lives, our society and our economy". Cambridge Zero was

first announced by Cambridge Vice-Chancellor Stephen Toope in his annual address in October 2019.

Request and response

5. On 11 December 2019 the complainant wrote to the University and requested information in the following terms:

"This is a formal request under the Freedom of Information Act 2000.

Could you please provide any email correspondence, and information relating to Cambridge Zero from 15/09/2019 and 10/12/2019.

To keep information retrieval focused, please search email records of:

(1) University of Cambridge Cambridge Zero Team: Emily Shuckburgh (Director of Cambridge Zero) and Erik Mackie (Communications Cambridge Zero).

(2) University of Cambridge Communications Team: Paul Mylrea (Director of Communications), Lauren Basham (Executive Assistant), James Hardy (Deputy Director of Communications), Andrew Aldridge (Head of Internal Communications / Deputy Director), Tamsin Starr (Head of News) and Paul Casciato (Communications Manager).

(3) University of Cambridge Governance: Professor Graham Virgo QC, Professor Andy Neely, Professor Stephen Toope and the head of the VC's Office Ángel Gurría-Quintana.

Key word searching: "Zero Carbon", "Cambridge Zero", "BP", "Schlumberger" and "Guardian" would direct searches to the following information within the time constraints of the request.

If you are to invoke Section 43 to withhold information in relation to any of these questions please note you must provide details of the exact FOIA exemption, details of who would be prejudiced by this information, and a public interest test justifying a conclusion with arguments for and against the release of the information.

If you are to invoke Section 12 to withhold information in relation to any of these questions please provide details of how locating, retrieving and extracting this information would exceed the appropriate limit of £450 as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Please also be aware of your duty under section 16 (1) of the Act to advise and

assist me in narrowing my request to bring it within the appropriate limit.”

6. The University provided the complainant with a refusal notice on 9 January 2020, advising that it considered the request to be vexatious under section 14(1) of the FOIA. The University explained that this was because of what it viewed would be the grossly oppressive burden that would be imposed on it by the requirement to manually review the emails in question to ensure that none of the information requested was exempt from disclosure.
7. The University also noted what it considered was the frequency of other similar requests it had received from those with whom it believed the complainant was acting in concert, and the staff time and resource already expended on answering those.
8. The University provided an internal review on 14 February 2020. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 21 February 2020 to complain about the way their request for information had been handled.
10. The complainant has discussed the University's refusal to help them narrow down the scope of their request ie the duty under section 16(1) of the FOIA to offer an applicant advice and assistance where reasonable to do so. Section 16 is most strongly associated with: helping prospective requesters; clarifying a request; reducing the scope of a request so that it can be complied with within the cost limit under section 12 of the FOIA; and with transferring a request. In this case the University is relying on section 14(1) and therefore section 16 is not a consideration.
11. The Commissioner's investigation has focussed on whether the University can rely on section 14(1) of the FOIA to refuse to comply with the complainant's request.

Reasons for decision

Section 14 – vexatious and repeat requests

12. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. However, section 14(1) of

the FOIA says that section 1 does not oblige a public authority to comply with a request for information if the request is vexatious.

13. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
14. 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.
15. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
16. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
17. If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.
18. In its submission to the Commissioner the University has explained that its primary rationale for applying section 14(1) to the request is the burden that would be imposed on it through having to manually review the "vast quantity" of correspondence that falls within the scope of the request. The University considers that parts of the information would constitute substantively exempt information under various exemptions set out in Part II of the FOIA. Exempt information would need to be redacted from any information that went on to be disclosed.

19. The University says that the main such exemption, as with any request focused on email correspondence, is that at section 40 (personal data), though it considers various other exemptions may apply in different ways. The University says that, given the correspondence topics and the correspondents' roles there would also, inevitably, be a significant quantity of emails with third parties external to the University. According to the University, it might be necessary to consult with at least some of these third parties about disclosing any information in which they had a material interest.
20. The University says that the *Home Office v Cruelty Free International* [2019] UKUT 299 (AAC) case has settled the legal question of whether section 14(1) can be claimed on the primary grounds of 'cost burden'. It is not clear what the University's argument is here but the Commissioner notes that this Upper Tribunal decision ruled that the *general burden* involved in complying with a request could render the request vexatious under section 14(1), rather than the cost burden of complying.
21. However, the University also noted that paragraphs 7.12 to 7.15 of the 2018 section 45 FOIA Code of Practice state that section 14(1) can be invoked for requests where section 12 (which concerns the cost of complying with a request) is not engaged but where the burden of redacting information for disclosure, consulting third parties and applying exemptions is 'significant'.
22. In its submission the University goes on to say that the complainant asked for information about Cambridge Zero from an eight-week period from September to December 2019. The request concerned information held within the email accounts of 12 University employees, to be located by searches run using five specific keyword terms. These keyword terms included the phrases 'Cambridge Zero' and 'Zero Carbon'. Two of the 12 correspondents within the scope of the complainant's request were the Director and the Public Engagement Coordinator of the recently-launched Cambridge Zero initiative. The University says that as a result, all or nearly all of their emails from the eight-week period would be captured by any automated search using these terms. This is because of their emails' inevitable subject matter and, more prosaically, because their emails' 'housekeeping' content, such as signatures, would incorporate the phrase 'Cambridge Zero'.
23. The University argues that, as a result, the volume of information within the scope of the complainant's request was very extensive. This was exacerbated by the fact that the request's time period covered the establishment and launch of Cambridge Zero. At that time the University was also responding to a "contentious" report by Cambridge Zero Carbon Society. The University has advised that this is a student-

led campaign group, not linked to the University's Cambridge Zero initiative. Cambridge Zero Carbon Society's report led to extensive local and national press interest. The University has directed the Commissioner to one article published in 'The Guardian' on 23 November 2019.

24. Having confirmed its primary rationale for applying section 14(1) is the burden imposed by the manual review of the large quantity of correspondence within the scope of the request, the University's submission goes on to discuss the possibility of a campaign. It has provided further information about the complainant which the Commissioner does not intend to reproduce in this notice. However, in the University's view, the request appears designed to disproportionately disrupt the workings of the some of the most senior members of the University, for the benefit of a student-led campaign group.
25. The University has noted that of the 12 potential correspondents the complainant has listed, the email accounts of 10 of them already had been the subject of a similar request under the FOIA from a separate applicant ('Applicant 2'). The University has provided the Commissioner with further information about Applicant 2. Applicant 2's request was received around one month before the complainant's request. It covered a slightly shorter time period in autumn 2019 and was ostensibly focused on a different topic (the Cambridge Arctic Shelf Programme, or 'CASP', as opposed to Cambridge Zero). However, the list of keywords to be used in the email search was similar and, in both cases, included the term 'Zero Carbon'. The University says it initially refused Applicant 2's request under section 14(1) for similar reasons to the complainant's request. On internal review this position was overturned, and information was disclosed subject to redactions under section 40 of the FOIA. The request was submitted through the What Do They Know platform and the University's correspondence with Applicant 2 including the disclosed information is available on that site.
26. The University considers that there is substantial overlap between these two requests. The University's position is that the complainant's request in isolation may be, and was, refused under section 14(1). But the fact that it followed shortly after Applicant 2's request (which itself was the latest of several requests on broadly related topics from that individual) was, says the University, a significant exacerbating factor in assessing the disproportionate burden imposed by compliance with the complainant's request. The two requests appear to the University to evidence a 'campaign' by separate requesters linked to the same student group to purposefully disrupt the University's activities and functions through the submission of requests on similar topics. The University considers that this is an unjustified use of the FOIA, whatever

their interests in the information sought.

Conclusion

27. In her published guidance on section 14(1) the Commissioner suggests that evidence of campaign against a public authority could include:
 - requests that are identical or similar
 - email correspondence in which other requesters have been copied in or mentioned; or
 - an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.
28. The Commissioner also advises authorities to differentiate between cases where the requesters are abusing their information rights to engage in a campaign of disruption, and those instances where the requesters are using the Act as a channel to obtain information that will assist their campaign on an underlying issue.
29. From the information the University has provided to her, the Commissioner is not persuaded that the complainant is involved in a campaign with another person to deliberately "disrupt the University's activities and functions" by submitting FOI requests on a similar theme.
30. In the circumstances of the complainant's request – the Cambridge Zero project, Cambridge Zero Carbon Society's interest in that project and associated report, and the associated media interest – it does not seem unreasonable to the Commissioner for an individual with an interest in Cambridge Zero to request correspondence about the project from those leading and involved with it. The Commissioner is not convinced that the complainant's rationale behind the request was simply to disrupt the University rather than to access information on a subject in which they had a keen interest.
31. The Commissioner notes that Applicant 2 had also submitted requests to the University that concerned issues associated with Cambridge Zero, but these appear to have been for different – though related – information. According to the University, they had also submitted their last request one month before the complainant submitted their request. In the Commissioner's view, a reasonable amount of time had therefore elapsed between the two requests. Again, and based on the information provided to her, the Commissioner is not persuaded that the complainant was working with Applicant 2 to deliberately disrupt the University rather than to genuinely seek information about a project in which they both had an interest. As such, she finds that, at this point,

there is insufficient evidence of a campaign against the University to justify categorising the request as vexatious for this reason.

32. The Commissioner has next considered whether the request can be categorised as vexatious because the burden of complying with it is disproportionate to the request's value. As has been noted, the process of redacting information can form part of that burden. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that an authority is most likely to have a viable case where:
 - the requester has asked for a substantial volume of information AND
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO AND
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
33. However, the Commissioner must also take account of the public interest of the information being requested. On that matter, she notes the Upper Tribunal (UT) decision in GIA/2782/2017. The UT noted that a compelling public interest in information's disclosure does not automatically 'trump' any consideration of the resource burden involved in complying with that request, such that the request cannot under any circumstances be regarded as vexatious. All the circumstances of each request need to be considered.
34. The Commissioner asked the University for more detail on the volume of information caught by the request and the information it considered would be exempt from disclosure. The University has noted that 12 members of staff are named in the request. For those accounts where the University has been able to ascertain figures (including for both the Director and the Public Engagement Coordinator of the Cambridge Zero initiative, who have the largest volumes), the total number of emails fitting the complainant's search criteria is, says the University, 6844. The University acknowledges that there will be significant duplication within and across the various bundles of emails but says that does not notably lessen the burden of the manual review required.
35. The University has told the Commissioner that information within the email correspondence is likely to attract the FOIA exemptions under section 36(2)(b) (prejudice to effective conduct of public affairs), section 40(2) (personal data), section 41(1) (information provided in confidence) and possibly section 43(2)(commercial interests). The

University notes that consideration of section 41 and 43 may involve liaising with third parties to seek their views on disclosure. It also says that the section 36 exemption would necessitate securing an opinion from the qualified person and both section 36 and 43 would involve considering the public interest test. The Commissioner accepts that given the matters behind the request – the Cambridge Zero initiative, Cambridge Zero Carbon Society's report and the press interest that was live during the period covered by the request – the information would be likely to engage one or more of those exemptions. She also considers that the exempt information would be scattered through the requested material.

36. The University has explained that it is not able to identify all relevant emails associated with some of the accounts referred to in the request at the current time, due to staff absences and technical issues caused by staff working from home because of the Coronavirus pandemic. However, the University has so far identified 6,844 emails within scope of the request. As has been noted above, the time period of the request covers the Cambridge Zero's establishment and launch, and the response to the Cambridge Zero Carbon Society's report. This would explain the high number of emails identified and the fact that 12 individuals are involved. The University would have to review this number of emails as a minimum in order to redact any of the information that is exempt from disclosure for any of the above reasons.
37. If it took a minimum of 45 seconds to review and redact each of the 6,844 emails so far identified (and associated information, such as any attachments), it would take approximately 86 hours to carry out this work. The total number of emails caught by the request will, however, be more than 6,844 once all the relevant accounts have been searched and so the time involved would be longer than that. The University has noted that it would also have to contact third parties, secure an opinion from a qualified person where relevant and consider the public interest test where relevant.
38. The Commissioner has considered whether carrying out this work is proportionate to the request's value ie the degree of wider public interest in the information. There is a public interest in the University's Cambridge Zero initiative and in the University demonstrating it is open and transparent. This interest is met, in the Commissioner's view, through information that the University publishes about that initiative. Similarly, there is some public interest in Cambridge Zero Carbon Society's report as evidenced by the press interest it received.
39. However, in their correspondence to the Commissioner the complainant has not made a case for the value of the specific information they have requested. Email correspondence on a particular subject (and associated

information such as email attachments) for the period covered by the request and generated by 12 individuals involved in the Cambridge Zero initiative may be of interest to the complainant. But the Commissioner has not been persuaded that the requested information is of sufficient wider public interest to warrant the time the University would need to spend reviewing and redacting the material in order to comply with section 1(1) of the FOIA.

40. The redaction process has been estimated as being likely to take one person at least two and a half working weeks to complete. The Commissioner has decided that this would be a disproportionate and oppressive burden for the University and that therefore the request can be categorised as a vexatious request under section 14(1) of the FOIA.

Other matters

41. Finally, the Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA. However, the legislation does not permit any consideration to be made of these circumstances.

Right of appeal

42. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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
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