Tribunals Service
Information Tribunal

Appeal Number: EA/2006/0070

Freedom of Information Act 2000 (FOIA)

Decision Promulgated

20th June 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Chris Ryan

And

LAY MEMBERS

Anne Chafer and Paul Taylor

BETWEEN:

VAITHILINGAM AHILATHIRUNAYAGAM

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

LONDON METROPOLITAN UNIVERSITY

Additional Party

Decision

The Tribunal Upholds the decision notice dated 8 August 2006 and dismisses the appeal.

Reasons for Decision

The request for information and its background

1. On 9 February 2005 the Appellant wrote to the Vice Chancellor of London Metropolitan University ("the University") requesting certain information under the Freedom of Information Act 2000 ("the Act"). He in fact asked 13 separate questions. We will deal with each of them in detail below. On 4 April 2005 the Academic Secretary for the University wrote in reply:
   "Your case has been extensively reviewed since 1991. No basis has been found to your claims. The correspondence is therefore closed."
   The Information Commissioner subsequently informed the University that this reply had breached the Act in respect of section 1 (failure to inform the applicant whether the information was held), section 10 (the time for compliance) and section 17 (failure to provide an adequate refusal notice). The University subsequently accepted that it had not complied with the Act on these procedural matters but, in light of subsequent events, we do not need to explore that aspect of the matter as part of this Appeal.

2. The reason for the University's peremptory rejection of the request probably resulted from the long and mutually painful relationship between the University and the Applicant over the previous sixteen years. Between 1988 and 1992 the Appellant had been a student at the City Polytechnic. That organisation had subsequently changed its name to London Guildhall University and, following a merger with the University of North London, changed its name to London Metropolitan University. We refer to it simply as "the University", disregarding the various name changes. The Appellant was not awarded a degree in 1992. We have been provided with a considerable body of material on the University's regulations, the communications between the Appellant and the University at the time regarding the requirements for a degree award and, subsequently, regarding his complaints about the way he was treated. It is not for this Tribunal to investigate why the degree was not

awarded or how the Appellant was treated at the time or since. However we should record that the material provided to us (largely by the Appellant) indicates that since 1992 the Appellant has:

(a) pursued certain appeal procedures within the University and complained of his treatment to, among others, the University's Admissions Officer, Deputy Academic Registrar, the Provost and Deputy Provost;

(b) Served on the University a questionnaire under Section 65 of the Race Relations Act 1976;

(c) Complained to the Data Protection Registrar (as he was then called) in relation to the University's obligations under Data Protection legislation;

(d) Instructed two firms of solicitors at different times to correspond with the University about his complaints;

(e) Issued proceedings in the County Court against the University for an order that he be awarded a degree "of maximum class" on the ground that the University's previous refusal to award him a degree resulted from its negligence and/or breach of contract. The Particulars of Claim in the action included an allegation that lower marks had been deliberately substituted for the higher marks that the Appellant had actually scored and that records had been tampered with. The Appellant also requested that subpoenas be issued against various members of the University's staff, the Chairman of the Board of Governors and the Registrar

(f) Arranged for his Member of Parliament to look into his case

(g) Corresponded with the Lord Chancellor's Department about the machinery available for dealing with student grievances.

The complaint to the Information Commissioner

3. The Appellant was not satisfied with the rejection of his request and complained to the Information Commissioner on 25 April 2005, his complaint taking the form of a seven page letter which, in addition to complaining that his 13 requests for information had not been answered, repeated the essence of his underlying complaints against the University. Following extensive, but slow-moving, correspondence with the Information Commissioner the University, under threat of the Information Commissioner serving an

Information Notice, sent a formal reply to the Appellant's original request. It took the form of a letter dated 4 April 2006, which we will refer to as the "Detailed Response". It addressed each of the 13 requests but the overall effect was to justify refusing the requests for information on the ground that they were *"Repeated and Vexatious within the meaning of the FOI Act"*. That was an apparent reference to section 14 of the Act. It is in the following terms:

> "(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"*

4. Section 1(1) of the Act is, of course, the subsection which creates the general right of a person to access information held by a public authority and the effect of section 14, therefore, is that no such obligation arises if the conditions set out in it exist. There is in this case no requirement to carry out a public interest balance in order to decide whether the exception should be overridden by a public interest in disclosure of the information in question.
5. The basis for the University's refusal to comply with the request was, under prompting from the Information Commissioner, subsequently expanded and clarified by the University in a letter to the Information Commissioner dated 8 May 2006 in which it asserted that:
    i. the Appellant had made it clear in earlier correspondence that his intention was to cause inconvenience;
    ii. the Appellant had been campaigning on his underlying complaint for 13 years;
    iii. all the issues raised in the request had been the subject of previous review, determination and legal action; and
    iv. the request could "fairly be characterised as obsessive or manifesting (sic) unreasonable"

6. The University was subsequently persuaded by the Information Commissioner that section 14(2) did not apply, on the basis that only requests made under the Act, and therefore after it came into force on 1 January 2005, could be taken into account in considering repeated requests for identical or substantially similar information. Accordingly its case before both the Information Commissioner and this Tribunal has been based solely on section 14(1).
7. It follows that arguments which might have been available, on the ground that some of the requests were arguably not requests for "information" at all, have not been pursued. As we indicate below, when we come to examine each of the 13 questions that comprise the request, the decision not to examine whether a particular question in fact constituted a request for information has in some respects confused the issues we have to decide. In our view it is, in any event, relevant to consider the terms in which parts of the original request were expressed as part of our consideration as to whether the request, read as a whole, should be regarded as vexatious.
8. At the end of his investigation into the Appellant's complaint the Information Commissioner issued a Decision Notice on 8 August 2006 in which he concluded that although, as mentioned, the University's original response to the request had been out of time and had lacked detail, it had applied section 14(1) correctly in characterising the Appellant's information request as vexatious.

The Appeal to the Tribunal

9. On 31 August 2006 the Appellant appealed to this Tribunal claiming that section 14 (1) was not applicable in his case. The Grounds of Appeal also recorded that three issues had been dealt with by the Information Commissioner separately under data protection legislation and that these did not form part of the Appeal.
10. The University was joined as a party to the appeal by an Order of Joinder dated 16 November 2006. However, it chose not to be actively involved in the Appeal process and has provided no effective assistance to us in resolving the matter. It was decided, after consideration of the evidence and other materials made available to the Tribunal, that the matter should be

determined, without an oral hearing, on the basis of an agreed bundle of documents and written submissions from the parties.

11. It will be convenient, at this stage, if we consider each of the Appellant's requests, before returning to the general impact of section 14(1). However, for reasons which will become apparent we will not follow the order in which they appeared in the request.

Withdrawn Questions (numbers 7, 8 and 11 in the request)

12. These read:

"7. do you deem that I was a less intelligent person as you and your solicitors… stated in reply to [an earlier Race Relations Act] questionnaire?"

"8. why did you and your solicitors put false information in your reply to the [Race Relations Act] questionnaire and other documents"

"11. I completed my Law Degree Course in July 1992 and have been fighting my case for over twelve years (12). Do you think it is very long period and you and your institution destroy my life and livelihood?"

Each question was challenged by the University in its Detailed Response on the grounds that it was a rhetorical question and not a request under the Act. It also stated that the response to the questionnaire referred to in questions 7 and 8 had been provided to the Appellant previously and that, as regards question 11, the position regarding the Appellant's degree had been well established. By letter dated 22 May 2006 the Information Commissioner told the Appellant that he was minded to accept the University's arguments on these questions and by letter of 29 June 2006 the Appellant indicated his agreement to that conclusion. Accordingly they were not dealt with in the Decision Notice and do not form part of the Appeal. However, they do serve as an indication of the purpose underlying the request, namely to re-open the issues previously included in the County Court action and other complaints listed in paragraph 2 above.

Question excluded from the Appeal because complied with (number 12 in the request)

13. Question 12 read *"what action did you take against your racist staff including [name of an individual]"* In its Detailed Response the University asserted, very simply, that this was not a request under the Act. On 24 April 2006 the Information Commissioner wrote to the University informing it that, despite the emotive language used in the question, it was a valid request for

information and that, if the Appellant had previously made allegations of racism, the University should confirm whether it held information which demonstrated whether any action had been taken in response to such allegations. The University initially disagreed with that interpretation and claimed that the request "*assumes and therefore requires the University to accept in order to answer that our staff are racist. We do not accept this and therefore can not answer".* It was also said by the University that the issue had been addressed in the 1996 County Court action. However, under threat from the Information Commissioner that if the request was not responded to the Decision Notice (which was then in the course of being prepared) would require the University to either provide the information requested or issue a refusal notice explaining why it was not to be provided, the University wrote to the Appellant on 22 May 2006 conceding that, contrary to its previous statement, this part of the request was valid but refusing to provide information on the basis that it was vexatious.

14. The Decision Notice recorded that, the University having agreed to respond, and having done so, the Appellant should make a separate complaint if he was dissatisfied with the response. In his Grounds of Appeal the Appellant's only complaint was that the Information Commissioner had not dealt with section 14 (1). He made no complaint in relation to data protection and indeed conceded that it was being treated as a separate issue. Accordingly, this question is not in issue on the appeal.

<u>Question excluded from the Appeal because subject access requests under Data Protection legislation (1 and 2 in the original request).</u>

15. Question 1 read *"When did you process my appeal of 5 August 1992"* and question 2 read *"When did you hold the meeting of the Modular Degree Scheme Board of Examiners in my case?"* In its Detailed Response the University claimed that these two requests concerned personal data about the Appellant and should have been the subject of a personal data request under the Data Protection Act 1998. The Information Commissioner agreed in correspondence that the Data Protection legislation applied and, in a letter to the University dated 22nd May 2006, advised that the University was obliged to supply the information. The Appellant accepted in correspondence with the Information Commissioner that the two questions were correctly characterised

as subject access requests under Data Protection legislation. They were not therefore dealt with in the Decision Notice and do not form part of this Appeal.

16. It should be noted that the University also stated in its Detailed Response that the information requested had been provided to the Appellant in 1992, in 1993 in relation to his Racial Discrimination questionnaire and in 1993 in correspondence with his solicitors. The University provided no evidence to the Information Commissioner in support of that assertion and declined to give a witness statement in this Appeal. It is, however, apparent that the Particulars of Claim prepared by the Appellant in the County Court action, while not spelling out the precise details of the appeal and meeting of the Board of Examiners, faithfully recorded the events surrounding the Appellant's examinations in February and June/July 1992, the publication of his results and his appeal against those results.

Question 3 in the request: “If there was such a meeting [i.e. Board of Examiners meeting], why didn't you invite me to attend?".

17. As we have mentioned previously the University did not challenge this part of the request on the basis that it was not truly a request for “information". The Information Commissioner’s approach was that, although such a challenge was available, he ought to take a broad and flexible approach to the meaning of requests under the Act. While we understand why the Information Commissioner should have wished to avoid taking an excessively legalistic approach to the language of the request his attempt to find an information request within this particular question gives rise to different problems. He interpreted it as a request for information about those of the University’s regulations that touched on attendance rights at a Board of Examiners’ meeting and, on that basis, treated it as a request capable of falling within section 1(1) of the Act. It seems to us, however, that it might equally well have been interpreted as a request for information about the Appellant’s personal status within the University and the rights attaching to that status. As such it would fall to be treated as a subject access request under the Data Protection Act 1998. The effect of section 40(1) of the Act is that a request for personal data of which the person making the request is the data subject may be refused on the basis that the information is covered by an absolute

exemption and it would not be necessary in that context to consider whether the request was vexatious in whole or in part.

18. As to the issue of whether this part of the request was vexatious the University stated in its Detailed Response that the meeting in question had been conducted in accordance with its regulations and that these had been supplied to the Appellant previously. The absence of any evidence from the University makes it difficult to establish what had been sent to the Appellant. However the agreed bundle includes a set of the regulations that the Appellant himself sent to the Information Commissioner on 29th of June 2006. He therefore clearly had them at that stage. His Particulars of Claim in the County Court action also record that he obtained a copy of them in 1992.
19. Although, as previously stated, the Information Commissioner considered that section 14 (2) (repeated requests) did not apply, and the University did not pursue the point before either the Information Commissioner or this Tribunal, it seems to us that, in considering whether this part of the request was vexatious, we may take account of the fact that it had been made available to the Appellant, prior to the Act coming into force, on at least one occasion.

Question 4: "Can you furnish documentary evidence to the effect that you followed all the relevant rules and regulations"

20. In its Detailed Response the University repeated its assertion that the meeting had been conducted in accordance with regulations and that the information (if information it was) had been provided to the Appellant's solicitors in 1993 and to him on numerous occasions. The University did not then, or in correspondence with the information Commissioner, or in any witness statement filed on this Appeal, provide any detail to support that assertion. However, our own inspection of the documents in the agreed bundle discloses that the defence filed by the University in the County Court action set out the process which was undertaken in relation to the marking of the Appellant's papers and the consideration of those marks by the Board of Examiners. In this case we take account, not only of the fact that the question of the University's behaviour towards the Appellant in relation to his examinations had been extensively rehearsed in both the County Court action and the other complaints referred to in paragraph 2 above, but also the fact that the purported request for information was couched in terms that required the

University to argue a case in its own defence rather than provide information. As we have said the appellant had previously confirmed in material presented by him to the County Court that he had a copy of the regulations and that at relevant times the particular parts of the relevant regulations had been drawn to his attention.

Question 5: “Why did you insert the code 4/90 DE 104 EX and can you clarify it in the right way?"

21. It seems to us that, as in the case of question 3 above, this question could as easily be interpreted as a subject access request under the Data Protection Act 1998 (a request for information about the status of the Appellant, as recorded in the coding attached to part of his record) as a request for information under the Act (the information required to decipher the code). Viewed as a request under the Act, it is apparent that the Particulars of claim, prepared by the Appellant in 1996 in relation to the County Court action, included information about the code, as applied to one or more of the documents provided to the Appellant while he was a student, as well as his understanding of its meaning at that time. This included an allegation that the code had been deliberately tampered with in order to support the University's case against him. The issue of the code had also been covered in correspondence between solicitors in 1993. In the course of that correspondence, and in the defence in the County Court action, the University's position as to its meaning and significance had been spelled out. It is not for this Tribunal to consider the merits of the dispute. Whatever misunderstanding may have occurred as to its meaning and significance, and whether that misunderstanding had been deliberately induced, is not relevant to the issues before us. It is evident that the Appellant had the information some years ago and conducted a vigorous debate with the University about it at the time. We take those facts, as well as the nature of the request itself, into account in considering the application of section 14 (1) to the request as a whole.

Question 6: "can you clarify the following MDDS regulations [this followed by a list of regulation numbers]".

22. In its Detailed Response the University repeated the statement that the meeting of the Board of Examiners had been conducted in accordance with its regulations and added that the information had also been provided in response

to the Appellant's legal action in 1996. No evidence was produced by the University to support that assertion at the time, or in correspondence with the Information Commissioner or in evidence to us. It is not clear what "information" is requested or what it was, in terms of information or explanation, that is said to have been provided in 1996. The Information Commissioner, in his Reply has suggested that the request must be construed as referring to the University's regulations and points out that the Appellant already had a copy of them.

23. One of the documents provided to us by the Appellant was a letter written by the University's solicitors to the firm of solicitors then acting for the Appellant on 14 July 1993, in which it was suggested that the regulations taken in isolation would not be of any great assistance. It then set out an explanation of the requirements, said to be contained in the regulations, as to the number of subject passes that were required before a degree would be awarded. The explanation included selective quotations from the regulations. Although, therefore, the University did not provide any evidence on the point it is apparent that the content of the regulations and their impact on the Appellant's particular circumstances were covered in correspondence between the parties' solicitors some 14 years ago.

Question 9: "what is the standard format of a transcript?"

24. In its Detailed Response of 4 April 2006 the University stated that the Appellant had been provided with a transcript on numerous occasions, specifically in 1993. No evidence was produced by the University in support of the statement. In the Information Commissioner's Reply he drew attention to the fact that a letter written to him by the Appellant on 20 April 2005 set out a form of transcript, which the appellant said should be applied in his case. In the same letter he stated that he had also been supplied with transcripts prepared by the University for three other former students and it is suggested that he was therefore already familiar with the normal form of transcript, as a result of his previous dealings with the University. The fact that he was also able to produce a number of transcripts issued to him, each of which differed to a greater or lesser extent, does not alter the fact that the broad format of a transcript was known to the Appellant.

Question 10: "Why did you exclude the following three subjects from the record

(a) Property two

(b) Law of Landlord and Tenant

(c) Marketing?"

25. In its Detailed Response the University said that this question had been answered in correspondence with the Appellant and his legal advisers in 1992, 1993 and 1996. It provided no evidence but added that it had been addressed in the University's defence to the County Court action, which does indeed include a statement that the Appellant had failed each of those subjects and set out the University's case for denying that the failures had been the result of prejudicial treatment applied to the Appellant. That document also included an explanation of the University's marking system, including a statement on the role of the external examiner and the Board of Examiners. It went on to relate that the Appellant had appealed against his result in the Law of Landlord and Tenant but had failed to respond to the outcome of that appeal with the result that his subsequent appeal in respect of the other two subjects mentioned in his question was “dismissed immediately".
26. It is evident, therefore, that, even if we disregard the University's allegations that the information had been provided in 1992 and 1993 (there being no evidence before us on this point) it is clear that the Defence served in 1996 dealt with the point. Evidently, it did not do so to the satisfaction of the Appellant, but that is not an issue for the Tribunal to consider.
27. As in certain of the earlier questions it is possible in our view to interpret the question as a request for personal data about the Appellant rather than (as the University and Information Commissioner did) a request for information as to the rules and regulations affecting the award of marks to examination candidates. In that event the information requested would, as stated above, be covered by an absolute exemption.

Question 13: "on two occasions i.e. 1993/4 and 1996/7 academic year's, I secured a place on Bar Vocational Course and lost the place on the course as you failed to send the transcript to the Bar Council. In your letter to the Bar Council of 5 August 1993, you stated that a decision on my result would not be taken until 29 September 1993. It should be noted that the deadline for me to submit the transcript was 29 September 1993. Why do you state that in your letter to the Bar Council"?

28. It seems to us that this question should be interpreted as a request for information about the timing of the transfer to the Bar Council of the information about the Appellant's results. However, it appears to have been treated by the University and the Information Commissioner as a request for information about the results themselves. In its Detailed Response the University stated that this point had been covered in the 1996 County Court action and in previous correspondence. As before, the University provided no evidence in support of that assertion. However we observe that the Defence in the County Court action included a denial that the University was liable for the Appellant's failure to obtain a place on the course because, it said, he had not passed sufficient modules to be awarded a degree. Whatever else may be uncertain about the history of the matter, it is very clear indeed that the issue between the Appellant and the University, through all the various claims and complaints, has been the question of whether or not the Appellant had passed sufficient exams to be awarded a degree. If the University's interpretation of the question is correct, therefore, it is clear that the information requested has been provided to the Appellant on several previous occasions. If, on the other hand, our interpretation is correct then no information has been provided to us by either the University or the Information Commissioner to indicate that information about the date on which the University intended to disclose information to the Bar Council has ever been disclosed to the Appellant. Had it addressed the question on the correct basis it seems certain that the University would still have argued that this part of the request demonstrates the Appellant's determination to continue disputing the refusal to grant him a degree, through every available forum, and that it should therefore be rejected under section 14 (1) of the Act.
29. We believe that, as with certain of the other questions, this one should properly have been treated as a subject access request under the Data Protection Ac 1998, being a request for information from the Appellant's personal records held by the University. In that case the information would, as before, have been subject to an absolute exemption.

Conclusions

30. The way in which the issues in this matter have developed, both during the Information Commissioner's investigation and this Appeal, demonstrate the dangers of proceeding on an assumption as to the information a person making a request for information is really seeking. The Act provides, in section 1(3), a mechanism under which a public authority may obtain clarification to enable it to identify and locate the information being sought. Clearly that provision should not be used to force a person seeking information to refine or restate a request if it already identifies the information sought, when interpreted with an appropriate degree of common sense, just because the linguistically pedantic might have cause to criticise the language in which it is expressed. However, if the University had made more of an attempt to obtain clarification from the Appellant of at least some of the questions asked, instead of dismissing them out of hand, its reasons for refusing disclosure might have had greater logical consistency with the request as a whole. The Information Commissioner might also have been able to avoid making assumptions as to the intended meaning of particular questions; assumptions which could have led to the request not being properly considered in some instances. Against that it has to be said that, throughout the preparations for the determination of this Appeal, the Appellant continued to argue his underlying complaint and appeared unable or unwilling to focus on the fact that the Tribunal's jurisdiction was limited to the question of whether or not the University had complied with its obligations under the Act. Even in his final written submissions to us on this Appeal the Appellant declined to address relevant issues; going so far as to include an argument that the University should be investigated for criminal activity in allegedly falsifying his academic record and should have damages awarded against it for having prevented him becoming a lawyer. It is quite conceivable, therefore, that even if clarification had been more effectively sought at the outset, the Appellant would have continued to obfuscate the issues.
31. In reviewing each question or group of questions going to make up the request we have identified some which in our view either should or might have been treated as subject access requests. As such the University would have been

entitled to refuse disclosure on the basis that the information was exempt information under section 40(1) of the Act and the Appellant should have made his request under the Data Protection Act 1998. He had, of course, previously made a request under the data protection legislation that preceded the 1998 Act.

32. To the extent that the request should or might have been treated as a valid request under the Act, requiring us to consider whether it is vexatious within the meaning of section 14(1) of the Act, we have taken into account the following matters:

    i. There is no statutory definition for the term vexatious and its normal use is to describe activity that is likely to cause distress or irritation, literally to vex a person to whom it is directed.

    ii. The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University.

    iii. The tendentious language adopted in several of the questions, demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess.

    iv. The background history between the Appellant and the University, as summarised in paragraph 2 above, and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before.

33. In the light of those conclusions we have decided that the Appellant's information request, viewed as a whole, was vexatious and that the Information Commissioner was correct in concluding that the University had handled the request in accordance with the Act and had been justified in refusing it.

CHRIS RYAN

Deputy Chairman Date 20th June 2007