

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 30 October 2008

Public Authority: Imperial College London
Address: Level 4 Faculty Building
South Kensington Campus
Exhibition Road
London
SW7 2AZ

Summary

The complainant made a request under the Freedom of Information Act 2000 (the "Act") to the Imperial College London (the "college") for information relating to its admissions guidelines. After considering the case the Commissioner is satisfied that the information requested is not held by the college. The Commissioner considers that the request was not however dealt with in accordance with section 1(1)(a) of the Act as the college did not clearly deny that any further information was held. Furthermore the Commissioner considers that section 10(1) of the Act was breached as the college did not comply with section 1(1)(a) within 20 working days of the request.

The Commissioner's Role

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

The Request

2. On 11 May 2007 the complainant made a request to the college for information relating to its admissions guidelines. The complainant referred to a Graduate Studies Committee paper (Senate/2001/74). The complainant requested information held by the college and used by the members of the committee when they prepared the said paper that "*enabled them to conclude:-*

- a. *Imperial will only accept graduates with first class honours degrees from some newer universities. (Paragraph 1.5)*
 - b. *Some applicants with Thirds from overseas institutions are considered for registration if they have relevant work experience. (Paragraph 1.11)*
 - c. *There are some countries from which a 3 year undergraduate degree is not accepted. (Paragraph 1.20)”*
3. On 8 June 2007 the college responded to the complainant's request for information. It explained that to contact each member of the Graduate Studies Committee (approximately 15 people) to ask them to search for information relating to a meeting held six years ago would greatly exceed the costs threshold. It stated that it was refusing to comply with the request on costs grounds. It did however explain that according to paragraph 1.1 of the paper, the findings were based on the deliberations of the Graduate Studies Committee over the preceding two terms. It therefore provided the complainant with the minutes of the meetings for the two terms preceding May 2002. It clarified that the minutes from November 2001 did not refer to this subject but were included for completeness.
4. On 2 August 2007 the complainant requested that the college conduct an informal review of its decision not to contact any of the committee members. The complainant explained that he was happy for the college to conduct a refined search (e.g. only contacting half of the members of the committee) so that costs would not be exceeded.
5. On 6 August 2007 the college wrote to the complainant with the result of the review it had conducted. It upheld its earlier refusal that to request the 15 committee members to search for information relating to meetings that were held six years ago would exceed the 18 hour cost threshold. Furthermore the college stated that the minutes that had been provided to the complainant were the official record of the committee's deliberations and decisions. It was clarified that the minutes contain a clear and accurate record of how and why the committee came to the decision that it did. It was explained that contacting the committee members to ask them to try and recall what information was used by them in reaching their decision would be tantamount to asking them to create a separate (and in all probability less accurate because of the lapse of time since the decision was taken) record of why the committee reached the decision it did. It concluded that because the complainant had already been provided with all the information which the college holds in relation to his request, the college was not prepared to contact the individual committee members.
6. On 7 August 2007 the complainant made a formal complaint under the college's complaint procedure as he was dissatisfied with the response he had received. On 29 August 2007 the college responded to the complainant. It upheld its decision to refuse the request. The reasons for refusal were that the college had already disclosed to the complainant, in the form of Senate Paper (2001/74) and the minutes of the Graduate Studies Committee meetings immediately preceding May 2002, all of the information it holds that is relevant to the issue. Furthermore it explained that by asking the college to contact the

members of the committee to seek the requested information, the complainant was in effect asking the college to conduct an investigation in which it would have to interrogate up to some 15 members of present and retired staff about how, over five years ago they as a group jointly put together a report paper and whether they can recall what documentation, if any, which has not already been released to the complainant, they relied upon in the process. It therefore asserted that by asking the college to do this the complainant was requiring it to create new information and that there is no obligation under the Act for the college to do this. Finally it conceded that if it was being asked to create new information the matter of costs was irrelevant.

The Investigation

Scope of the case

7. The complainant made a complaint to the Commissioner on 18 October 2007 as he was dissatisfied with the college's response to his request for information. The Commissioner has investigated whether the college dealt with the request in accordance with its obligations under the Act in particular section 1(1) and section 10(1).

Chronology

8. On 2 July 2008 the Commissioner wrote to the college to begin the investigation of this case. The Commissioner asked the college for clarification regarding the following:-
 - a) Whilst the college is not under an obligation to create information to comply with the request it is under an obligation to ensure that there is no further information held which may satisfy the request. In doing so it would be reasonable for the college to contact the Committee members who are still employed by the college to ask whether they hold any recorded information relevant to the request. Has the college done this and if not why not?
 - b) In relation to Committee members who are no longer employed by the college, when does the college close leavers email accounts and is there any way of accessing deleted email accounts?
 - c) Is there any other information held by the college, other than that which has already been provided to the complainant that may be relevant to the request?
 - d) If the college believe that complying with any of the above would exceed the cost limit of £450 as set out by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations"), could the college calculate in detail how complying with the complainant's request would exceed this limit and provide a breakdown of the cost of complying with the request in relation to:-
 - determining whether the college holds the information,

- locating the information, or a document which may contain the information,
 - retrieving the information, or a document which may contain the information, and
 - extracting the information from a document containing it (including editing or redacting the information).
9. On 29 July 2008 the college responded to the Commissioner's questions set out above. The college felt it was relevant for the Commissioner to be provided with some background information to the complainant's request which was the focus of this investigation. The college explained that the complainant first submitted a request for information to it on 10 January 2007. This request included requests for 9 separate pieces of information relating to the college's admissions process. With the exception of one document which the college withheld, which is the subject of a separate investigation currently being undertaken by the Information Commissioner's Office, the college released all of the requested information.
10. The college explained that over a period of seven months from January 2007 the complainant submitted numerous further requests for information, many of which themselves contained multiple requests and demands. It clarified that all of those requests were related to the college's admissions processes and the way in which those policies had been applied in the case of one particular student. The college asserted that it attempted to deal reasonably with all of the requests, releasing all of the information it held and, where appropriate, explaining that the information either does not exist or had already been released to the complainant. In addition the college explained that as well as dealing with the individual requests, college officers were also engaged in extensive email correspondence with the complainant about how his requests were being handled. It confirmed that with the exception of the document noted at paragraph 9 above, no further information was withheld by the college.
11. The college explained that due to the number and frequency of the complainant's requests, there were occasions when his requests were deferred on the grounds that, when aggregated with the other requests submitted by the complainant in a 60 day period, processing of his requests would have exceeded the £450 costs threshold. The college asserted that it was because the complainant's requests were being monitored to ensure that the costs threshold was not exceeded, that the request which is the subject of this investigation was initially refused on costs grounds. However the college confirmed that following the review of the complainant's request under the college's complaints procedure, the college did not ultimately pursue the costs issue.
12. The college explained that on 20 August 2007 it informed the complainant that his most recent request (not the request which is the subject of this investigation) was vexatious in that the complainant was requesting information which had already been provided to him which was imposing a significant burden on the college and was obsessive and manifestly

- unreasonable. The college referred to the Commissioner's Guidance Note No. 22, and asserted that had it been aware of this guidance at the time of dealing with the request which is the subject of this investigation it is likely it would have declared that this request was vexatious.
13. In relation to the Commissioner's particular questions set out at paragraph 8 (a) to (d) above, in relation to question (a), the college confirmed that it has not asked the committee members still employed by the college to search their own records. It explained that it had not done so because it would not be reasonable for a number of reasons. It explained that college committees, including the Graduate Studies Committee, make decisions collectively on the basis of the information provided in committee papers and on the discussion and arguments made during the committee's meetings which are recorded in the minutes. It clarified that if an individual member of a committee had access to other information not contained in the committee papers, or had personal knowledge that is or may have been relevant to the subject under discussion, that member would normally make that known during the course of the meeting at which a particular issue is discussed. If additional information is introduced during the course of a meeting it will be recorded in the minutes of the meeting. It explained that if, for whatever reason, a member did not present this additional information to the other members that information would not have influenced the collective decision making process of the committee and would therefore be irrelevant to the decision made by the committee.
 14. Therefore the college asserted that the only information that was used by the committee members and would be relevant to the decision taken collectively by the committee is that which is either contained in the papers presented to it or that which has been included in the minutes of the discussion leading to a particular decision. All of this information (the committee papers and minutes) the college explained have already been released to the complainant.
 15. The college further explained that if it was to ask some of the members to try to recall after six years what information they personally had access to and which they might have used in reaching a particular decision, there is a danger that, because of the lapse of time and the imperfection of memory, individual members could cite as relevant information that which was not in fact used by the committee as a whole and which did not therefore influence the committee's final decision. The college clarified that it is likely that after six years, information gleaned as a result of contacting committee members would be both partial and inaccurate. This it asserted would be tantamount to the creation of an alternative and less accurate record of the committee's decision and the reasons for it. It would also in the college's view entail the creation of new information which it stated it is not required to do under the Act.
 16. The college also decided not to contact the remaining members of this committee because departmental copies of the relevant committee papers would already have been destroyed. It explained that the college's formal retention schedule provides that permanent copies of committee papers are to

be retained by the college's Corporate Records Unit (CRU) but that the departmental records of central college committee meetings should only be retained for one year. It further explained that the Graduate Studies Committee is one of the Senate Committees, its members are all drawn from the college's academic departments and the meeting the complainant was interested in took place some six years ago. As a result all of the departmental copies of the papers would therefore have been destroyed long before the complainant's request was submitted. The Commissioner has viewed a copy of the college's formal retention schedule and notes that its contents corroborate the above explanation.

17. In relation to the question posed at paragraph 8(b) above, the college explained that it has a leaver's procedure, part of which dictates how email accounts are to be handled. The procedure provides three options for dealing with an email account as follows:-
- i. The email account can be closed, all existing email is deleted and any new emails are or can be forwarded to the leaver's new email account for a period of six months.
 - ii. The email account can stay in existence and new email forwarded to the email account of the new person taking over the job.
 - iii. The email account can stay in existence and be taken over by a new person.

A form setting out these options and determining which is to be applied in each individual case is completed by the relevant department administrator. The leaver is required to give assent to whichever of these three options is chosen. It clarified that if a leaver's form is not completed the email account is deleted six months after HR has set the leaver's flag for the individual in the HR database. It asserted that there is no way to access deleted email accounts. The college concluded that whether or not a college leaver's email account is accessible will depend on each individual case and will also be dependant on how recently the individual in question left the college. However it asserted that where an account has been deleted (and this is likely to be the position for most leavers) the account will not be accessible.

18. In relation to the question posed at 8(c) above, the college confirmed that with the exception of the one document that is being considered as a separate case by the Information Commissioner's Office, the complainant has been provided with all of the information it holds relevant to the request which is the subject matter of this investigation and all of the other numerous requests submitted by the complainant between January and September 2007.
19. Finally in relation to the question posed at 8(d) above which deals with the issue of costs, the college explained that it considers that all relevant information has already been provided to the complainant and that to contact the members of the Graduate Studies Committee would not be reasonable and would not result in the discovery of any additional relevant information. That being so the college no longer believes that cost considerations are relevant in this particular case.

20. On 1 August 2008 the Commissioner responded to the college. The Commissioner explained that from the college's response to him set out at paragraphs 11 to 20 above he considers that the college was asserting that it had already provided the complainant with all of the information it holds which falls under the scope of the request. The Commissioner therefore explained that his investigation would focus on determining whether the college holds any further information which may satisfy the complainant's request under section 1(1)(a) of the Act. In relation to whether or not the college is under a duty to contact committee members who are still employed by the college, the Commissioner explained that he did consider the college were obliged to do this. The Commissioner clarified that the committee members do not have to relay memories or provide statements but if they hold any information (formal or otherwise) it must be considered. It does not matter whether the information is informal or less accurate than the official minutes of the meeting. If a public authority receives a request for information which it holds, it must disclose this information, unless one of the exemptions listed in the Act applies. In order to meet the requirements of section 1(1)(a) of the Act, the Commissioner confirmed that the college should contact the individual committee members who still work for the college in order to establish whether it holds any further information which would fall within the scope of the request. The Commissioner asked the college to inform him of the result of its search.
21. In relation to email accounts of former employees of the college, the Commissioner noted that the college stated that most leaver's accounts are deleted and that there is no way to access deleted email accounts. The Commissioner asked the college to confirm whether this is the case for all of the individual committee members who have left the college.
22. On 12 August 2008 the college replied to the Commissioner's further queries. It explained that it had now contacted the members of the committee to confirm whether or not they hold any information which was used in the preparation of the relevant report to the Senate. The college explained that there were fifteen members of the committee in 2002. Of these, seven are still employed by the college, three have retired but hold emeritus positions and still have email accounts, two are no longer directly employed by the college but still have active email accounts because they maintain a limited connection with the college, and three are no longer at the college and do not have active email accounts.
23. The college confirmed that of the twelve original members who still have email accounts and are therefore contactable, ten have confirmed that they do not hold any recorded information used in the preparation of the report. The college explained that it is still awaiting a response from two members, but this may be because they are currently on leave, or because their connection with the college is now very limited. The college explained that it has written again to the two outstanding members to ask them to confirm whether or not they hold any information. The college did however assert that it believes it is reasonable to expect that given the responses it has received so far, that if the

remaining two committee members respond they will confirm they do not hold any information.

24. In relation to the email accounts of the three committee members that have left the college, the college's ICT Division have confirmed that these three email accounts have all been closed and are no longer accessible.

Analysis

Procedural matters

Section 1

25. Section 1(1) of the Act states that:

“Any person making a request for information to a public authority is entitled –

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.”*

26. The Commissioner has considered whether the college has complied with section 1(1) of the Act by ultimately stating that it did not hold any further recorded information other than that which has already been provided to the complainant within the scope of the request.
27. In reaching a decision on this case the Commissioner has considered the college's response set out at paragraphs 11 to 20 and 23 to 25 above. The college has now conducted an extensive search to determine whether or not there is any further information held which the complainant has currently not been provided with. The Commissioner is satisfied that the college has attempted to contact all of the members of the committee who are either employed or still have direct links with the college. Out of the twelve committee members the university has attempted to contact, ten have provided a response. Those responses were unanimous, none of the ten committee members who have replied to the college hold any recorded information relevant to the complainant's request. Of the two members that have not responded, the college sent a second letter to chase up a reply but none was received.
28. The Commissioner is mindful that the meeting which produced the Senate report which is the subject of the request took place six years ago. The amount of time that has since elapsed supports to the college's assertion that no further recorded information is held.
29. In reaching a decision the Commissioner was mindful of the Information Tribunal decisions in *Bromley v The Information Commissioner and The Environment Agency (EA/2006/0072)* and *Fortune v Information Commissioner and National*

Patient Safety Agency [EA/2008/0004]. In cases where it is disputed whether a public authority holds any further information which would fall under the scope of a request, the Commissioner has to consider whether on the balance of probabilities any further information is held by that authority. This approach has been confirmed by the Information Tribunal in *Bromley V The Information Commissioner and The Environment Agency* [EA/2006/0072] which dealt with a case whose central issue was whether the authority held any further information which fell under the scope of a request. In making its decision the Tribunal stated:

“There can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records. This is particularly the case with a large national organisation like the Environmental Agency, whose records are inevitably spread across a number of departments in different locations. The Environmental Agency properly conceded that it could not be certain that it holds no more information. However it argued...that the test to be applied was not certainty but the balance of probabilities. This is the normal standard of proof and clearly applies to Appeals before this Tribunal in which the Information Commissioner’s findings of fact are reviewed. We think that its application requires us to consider a number of factors including the quality of the public authority’s initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.”

30. The Commissioner considers on balance of probabilities, having considered the explanation provided by the college, that no further information is held relevant to the scope of the request.
31. However as the college did not deny that any further information was held within the 20 working day time limit set by section 10 of the Act, nor did the college rectify this clearly at the internal review of 29 August 2007, the Commissioner considers that the college failed to comply with section 1(1)(a) of the Act.

Section 10

32. Section 10(1) of the Act requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt of the request.
33. The college provided a response to the complainant’s request on 8 June 2008. It provided the complainant with the minutes of the relevant meetings and stated that to contact the committee members to retrieve further information would exceed the cost limit as set out by the Regulations. As the college did not deny

that any further information was held at this stage section 10(1) has also been breached.

The Decision

34. The Commissioner's decision is that the college does not hold any further information which would fall within the scope of the request. As the college did not clearly inform the complainant of this it has breached section 1(1)(a) of the Act.
35. The Commissioner has also decided that the college did not comply with the requirements of section 10(1) of the Act, in that it did not provide an adequate response to the complainant's request within twenty working days.

Steps Required

36. As it is evident from the Commissioner's decision that the college does not hold any further information other than that which has already been provided he does not require any steps to be taken.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

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

Dated the 30th day of October 2008

Signed

Anne Jones
Assistant Commissioner

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

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

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

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

Section 1(2) provides that -

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

Section 1(3) provides that –

“Where a public authority –

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

(b) has informed the applicant of that requirement,

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

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”