

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 February 2011

Public Authority: The University of Salford
Address: 43 Crescent
Salford
M5 4WT

Summary

The complainant submitted a series of seven requests for information between 5 December 2009 and 20 February 2010. The requests were all refused as vexatious under section 14(1) of the Act. The Commissioner finds that the public authority correctly refused the requests under the provisions of section 14 of the Act but the university's response breached section 17(5) and section 17(7)(b) of the Freedom of Information Act.

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.

Background

2. Between the end of October 2009 and early February 2010 the university received slightly over 100 requests for information, submitted by 13 individuals. All but three of the requests were submitted via the *WhatDoTheyKnow.com* website. This constituted a significant increase in the number and rate of receipt of requests. The university explains that, for comparison, during the whole of 2008, it received 117 requests, submitted by 78 different requesters (none of whom had submitted more than 3 requests in the year) and that, during the rest of 2009, it had received a total of 78 requests. Prior to this sudden increase in requests,

the university had not received any requests via *WhatDoTheyKnow.com*, or any other FOI website website and it argues that this, in itself, suggests a level of collusion among the requesters.

3. The requests originated from a comparatively small number of individuals who, the university believed, had connections to a former staff member who had recently been dismissed by it. The public authority considered this to be a concerted attempt to disrupt its activities by a group of activists undertaking a campaign.

The Requests

4. The complainant has made a series of requests to the University of Salford, of which seven are the subject of complaints to the Information Commissioner's Office (ICO) under consideration in this Decision Notice. The requests were all refused on the same grounds and the public authority's arguments relate equally to each request. The Commissioner has therefore found it possible to deal with all seven complaints in this one Decision Notice.
5. The requests are listed in chronological order, together with the associated case reference allocated by the ICO in Annex 2 to this Decision Notice. All the requests were submitted via the website *WhatDoTheyKnow.com* (WDTK). The chronology of the requests is summarised below.
6. The first request was submitted on 5 December 2009¹. This was refused by the university as vexatious, under section 14(1) of the Act, on 2 February 2010. An internal review was requested on 5 February 2010 and the internal review outcome communicated to the complainant on 7 April 2010.
7. The second request was also submitted on 5 December 2009². This was refused by the university as vexatious, under section 14(1) of the Act, on 2 February 2010. An internal review was requested on 5 February 2010 and the internal review outcome communicated to the complainant on 7 April 2010.

¹ See http://www.whatdotheyknow.com/request/salaries_of_70000_and_above#incoming-78978

² See http://www.whatdotheyknow.com/request/use_of_credit_cards#incoming-79006

8. The third request was submitted on 19 December 2009³, and amended on 20 December 2009. This was refused by the university as vexatious, under section 14(1) of the Act, on 2 February 2010. An internal review was requested on 5 February 2010 and the internal review outcome communicated to the complainant on 7 April 2010.
9. The fourth request was submitted on 5 January 2010⁴. This was refused by the university as vexatious, under section 14(1) of the Act, on 2 February 2010. An internal review was requested on 5 February 2010 and the internal review outcome communicated to the complainant on 7 April 2010.
10. The fifth request was submitted on 19 January 2010⁵. This was refused by the university as vexatious, under section 14(1) of the Act, on 2 February 2010. An internal review was requested on 5 February 2010 and the internal review outcome communicated to the complainant on 7 April 2010.
11. The sixth request was submitted on 30 January 2010⁶. This was refused by the university as vexatious, under section 14(1) of the Act, on 2 February 2010. An internal review was requested on 5 February 2010 and the internal review outcome communicated to the complainant on 7 April 2010.
12. The seventh request was submitted on 20 February 2010⁷. This was refused by the university as vexatious, under section 14(1) of the Act, on 10 March 2010. An internal review was requested on 11 March 2010 and the internal review outcome communicated to the complainant on 7 April 2010.

³ See

http://www.whatdotheyknow.com/request/management_off_campus_residentia#incoming-79013

⁴ See http://www.whatdotheyknow.com/request/zero_hours_contracts#incoming-79017

⁵ See http://www.whatdotheyknow.com/request/expenditure_on_consultants_14#incoming-79022

⁶ See http://www.whatdotheyknow.com/request/mobile_phones#incoming-79024

⁷ See http://www.whatdotheyknow.com/request/university_transport_services#incoming-79034

The Investigation

Scope of the case

13. On 12 April 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

The public authority had:

- failed to provide the information asked for;
- failed to tell her whether or not they hold information;
- failed to respond to her request within time limits;
- failed to give her proper advice and help;
- failed to properly explain the reasons for refusing the request;
- failed to correctly apply an exemption under the Act – in other words, they have refused to disclose information for the wrong reason.

14. The complainant also stated:

"I believe that Salford University has demonstrated systemic, repeated and serious non-compliance with the Act, and non-conformity with the associated Codes of Practice. I wish to highlight the following issues to the Commissioner, all of which have already been identified by the ICO as making engagement necessary:

- serious or repeated failures to meet the requirements of section 10 (1)

- regular and / or unwarranted extensions to the timeframe for internal reviews, with particular emphasis on those which exceed the Commissioner's guidance

- failure to have an internal review procedure in place, or the failure to operate that procedure in accordance with the recommendations of the section 45 Code of Practice

- repeated or serious application of blanket, or obviously inappropriate exemptions (or exceptions)

- repeated failure to explain why exemptions (or exceptions) apply

- evidence that the authority is failing to take its responsibilities seriously

- evidence that an authority does not have a sufficient understanding of the Act and the Codes of Practice"

15. The Commissioner wrote to the complainant on 1 June 2010 to clarify that the circumstances of her complaint were associated with the university's refusal of a series of requests (ie. including the complainant's) as vexatious and the focus of his investigation would be the university's refusal of various requests under the provisions of section 14 of the Act.

16. The complainant did not respond and therefore the Commissioner's investigation has been conducted to that purpose. He comments, however, that an investigation into the application of section 14 of the Act will necessarily cover the bullet-points listed in the complainant's grounds for complaint, at paragraph 13 for the following reasons.

- *failed to provide the information asked for;*

A refusal under section 14 of the Act removes the obligation to comply with a request under section 1(1).

- *failed to tell her whether or not they hold information;*

If there is no obligation under section 1(1), there is no obligation to confirm or deny information is held.

- *failed to respond to her request within time limits;*

This is dealt with later in this Decision Notice.

- *failed to give her proper advice and help;*

There is no duty to provide advice and assistance if a request is refused as vexatious. This is contained in paragraph 15 of the code of practice issued under section 45 of the Act⁸.

- *failed to properly explain the reasons for refusing the request;*

The refusal notice issued is sufficient to satisfy the requirements of section 17(5) of the Act, which stipulates what such a refusal notice must contain.

- *failed to correctly apply an exemption under the Act – in other words, they have refused to disclose information for the wrong reason.*

⁸ Available to download at <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>

Section 14 of the Act is not an exemption under the Act.

Chronology

17. On 17 May 2010 the Commissioner wrote to the university to ask for its detailed arguments in support of its decision to refuse the requests as vexatious.
18. The Commissioner wrote to the complainant on 1 June 2010, to confirm that the scope of the case would be to examine the university's refusal of her various complaints under section 14(1) of the Act. The complainant did not reply.
19. The Commissioner wrote again to the complainant on 25 June 2010 to set out the tests which are normally applied when considering whether a request is vexatious, summarising the university's general arguments and inviting her to respond.
20. The complainant replied on 28 June. She stated the following:

"I agree with the arguments posted by others on whatdotheyknow.com about the university. My requests have a serious purpose, such as to scrutinise public money spent on superfluous limousines for senior staff, staff using mobile phones for personal use, the cost of senior management retreats, use of credit cards, etc. Also I am concerned that they ignore foi requests, they don't undertake proper internal reviews and they issue late blanket refusals. They are funded by public money through Hefce and student fees and they should account for it. Salford is a small city and rumours about the university spread quickly - they should simply confirm or deny."

[The Commissioner observes that comments posted on the complainant's and others' requests to the university are generally critical of the university's actions in the way it has handled the various requests, specifically in relation to its extensive application of section 14 of the Act. He understands that this confirms that the complainant's concerns are focussed on the university's refusal of the requests as vexatious].

21. The university responded, at intervals, between June and October 2010, with arguments and supporting evidence for its position.

Analysis

Substantive Procedural Matters

Section 14

22. The Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:

- whether compliance would create a significant burden in terms of expense and distraction;
- whether the request is designed to cause disruption or annoyance;
- whether the request has the effect of harassing the public authority or its staff;
- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
- whether the request has any serious purpose or value.

Context and history

23. This complaint is unusual in that the public authority has elected to refuse the requests not in isolation, but in the wider context of a substantial number of freedom of information (FOI) requests received during the material time and which it believes are associated with each other to varying degrees.

24. The associations derive not only from the timing, in which a small number of individuals have submitted a volume of requests roughly equivalent to a year's-worth of requests, during a period of about three months (approximately two-thirds of which were submitted within a seven week period from November to mid-December), but also due to some significant similarities in the information requested.

25. The Commissioner accepts that a public authority which was subject to a surge in the number and rate of FOI requests it received, many of which were complex and multifaceted, would find dealing with that surge a burden, both in terms of cost and staff resources in processing and responding to the requests. He acknowledges that a public authority is unlikely to have allocated staffing resources to FOI compliance, beyond those which are necessary to deal with its normal level of business. However, it does not follow that requests which form part of a surge or significant increase can then be classed as vexatious. But the

Commissioner agrees that such a surge will be likely to constitute a burden and consequently distract the public authority from other activities and functions. Whether any of the requests that make up the surge can be classed as vexatious may depend, for example, on whether there are any further factors which point to any deliberate intent to cause such an effect and patterns of requests made by individual requesters.

26. The requests are argued by the university to exhibit characteristics which connect them to an individual who had been suspended from his post-graduate staff position in May 2009 on disciplinary grounds and subsequently dismissed in August 2009, upheld at appeal in September 2009. It believes that the timing and content of the requests strongly suggests that the requesters have been acting in pursuit of a continuing campaign (connected to the dismissed individual), in order to disrupt the workings of the university.
27. The Commissioner recognises that there is nothing in the Act which prevents the aggregation of requests from disparate sources for the purposes of section 14 of the Act, and he is mindful that section 12 of the Act makes specific provision for just such a process for the consideration of costs, where two or more requests have been made by different persons who appear to the public authority to be acting in concert, or in pursuance of a campaign. The university has argued that a similar provision ought to apply in the circumstances, as to do otherwise would permit individuals to circumvent legitimate refusals of vexatious requests by submitting them, or appearing to submit them, via another person. The Commissioner has also noted the approach taken in a number of cases related to Forestry Commission Scotland⁹. In these cases he accepted that a number of applicants were acting together, in pursuance of a campaign and this was a relevant consideration as to whether the requests were vexatious.
28. In the case of a refusal under section 12 (costs) as a result of the aggregation of multiple requests, it is for the public authority to show that the refused requests are connected and the Commissioner will consider the matter on the merits of the case. Accordingly, he has sought the public authority's arguments for its belief that the requests under consideration have been submitted by persons who are acting in concert, or in pursuance of a campaign.
29. The university has not been able to demonstrate indisputable links between all the parties whose requests have been refused. It has, however, demonstrated to the Commissioner's satisfaction that a significant number of the requests are related to topics raised by the

⁹ FS50176016, FS50176942, FS50187763, FS50190235

dismissed individual, either overtly or via anonymous blogs and posts, including a series of what the university characterised as scurrilous newsletters, highly critical of the university's senior staff, titled 'The Vice Consul's Newsletters' which were created and in circulation at the university at the time of the requests. The 'Vice Consul's Newsletters' have been linked conclusively to that individual and were a factor in his dismissal. The dismissed individual has also authored a blog website, 'Vagrants in the Casual Ward of a Workhouse' which continues to campaign about related matters, contains criticism of the university and makes reference to the FOI requests.

30. A different anonymous blog, 'The ratcatchers of the sewers' (the 'Ratcatchers' blog) adopts a similar tone and is also substantially directed against the University of Salford, making similar arguments and accusations. The university contends that there is a connection to the dismissed individual, but it has not been conclusively linked to him in the university's submissions to the Commissioner. The blog also confirms that several of the FOI requests were submitted by its contributors and encourages its readers to continue the practice.
31. The question for the Commissioner on this issue is: whether the apparent links between the requests, various blogs, and the parties making the requests can be considered as part of a deliberate campaign, and that the individual requesters are acting in concert or whether, even if the requests are linked to the topics on the blogs, they have been prompted by the matters raised on the blogs and elsewhere but the requester is asking them for his own reasons and not to any collective agenda. This does not need to be proved indisputably but on a balance of probabilities. A third possibility also arises, in that it could have been the intention of the blog posters to stimulate a series of FOI requests on topics of their choosing and, in doing so, their readers have unwittingly carried out their wishes without any deliberate, vexatious intent.
32. The university has not made any specific arguments in respect of the complainant's requests, its arguments are intended to apply to the body of requests as a whole. The Commissioner has therefore considered its general arguments in the context of the complainant's requests.

Would compliance create a significant burden in terms of expense and distraction?

33. The Commissioner is mindful that the requests were refused collectively, and he is in no doubt that the receipt of a year's-worth of requests compressed into three months, many of the requests being lengthy and complex, would create a significant burden in terms of expense and distraction for any public authority. Readers are directed to the

Commissioner's Decision Notices in case references FS50288812; FS50297312 and FS50304283 which also relate to complaints about the same public authority from other parties who submitted requests which have been similarly refused.

34. The Commissioner also notes that six of the complainant's seven requests are complex and would be likely to require substantial responses. Taken collectively they would create a significant burden in terms of distraction of the university's staff from their other duties in compiling the necessary information for a response and, even if each individual request were not considered likely to exceed the cost limit provided at section 12 of the Act, the aggregate effect of the seven requests would be likely to also create a significant burden in terms of cost.

With specific reference to the complainant's seven requests, the Commissioner will consider the applicability of the following tests together, to each request in turn:

Are the requests designed to cause disruption or annoyance?

Do the requests have the effect of harassing the public authority or its staff?

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?

35. The university argues that the overall number of requests it received in the period had the effect of harassing it and its staff. The university also argues that many of the requests, notably those submitted by the complainant, are complex and would have required substantial responses, and suggests that they may have been specifically drafted to have this effect. The Commissioner does not consider that the burden of the requests can be equated to an effect of harassment but as acknowledged above the impact of expense and distraction can be regarded as significant as a factor on its own.

Request No. 1. ICO complaint reference FS50312234

36. The Commissioner observes that the complainant's first request, dated 5 December 2009 is substantially similar to a series of requests submitted by a 'Roger Norvegicus'¹⁰ on 30 November 2009. Those requests had been refused on 2 December 2009, because the name given was a pseudonym which therefore invalidates the request under section 8(1)(b)

¹⁰ See http://www.whatdotheyknow.com/user/roger_norvegicus

of the Act. (The Commissioner also notes a similarly-worded request, submitted on 15 November 2009¹¹ by a different applicant which had been refused under section 12 of the Act (cost for compliance) by the university on 2 December 2009).

37. The Commissioner also notes a posting on the 'Ratcatchers' blog of 3 December 2009 which gives details of the requests submitted by 'Roger Norvegicus' and he further notes that 'Roger Norvegicus' is the name given by a significant contributor to that blog. (The Commissioner thanks the university for reminding him that the scientific name for the brown rat (also known as the common rat or sewer rat) is *Rattus Norvegicus*).
38. In refusing his requests, the university informed 'Roger Norvegicus' that he could resubmit his requests using his real name (subject to suitable proof of identity). The Commissioner is interested to note the timing of the complainant's first request, being three days after the university refused the Norvegicus requests and two days after the associated posting on the 'Ratcatchers' blog. (The Commissioner also notes a series of requests identically worded to the Norvegicus requests, submitted by a different applicant on 1 February 2010¹². These were refused under section 14 of the Act and not pursued further by the applicant).
39. The Commissioner is therefore satisfied that there is evidence of a link between the complainant's first request and the 'Ratcatchers' blog, and persons associated with that blog. He observes that a substantial request, couched in virtually identical language, has been submitted four times, by four differently-named applicants, in the period from 15 November 2009 to 1 February 2010, with three of those requests having been submitted within a three-week period. (In two cases, the lengthy request was submitted as one request, in the other two it was broken up into a series of similarly-worded requests).
40. The Commissioner considers that a reasonable person, having observed the recent refusal of a virtually identical request, on two occasions, only days previously, might pause and consider the likelihood that their request would receive similar treatment. He concludes that there would be a reasonable suspicion in the requester's mind that their request would also be refused. He therefore considers that the complainant's actions in submitting the request, regardless, suggests that the request is obsessive and designed to cause disruption or annoyance.

¹¹ See http://www.whatdotheyknow.com/request/salaries_of_more_than_70000_2#incoming-79045

¹² See http://www.whatdotheyknow.com/user/andy_lockhart

Request No. 2. ICO complaint reference FS50312236

41. The complainant's second request was submitted on the same day as her first request. While somewhat shorter, it is nevertheless a complex request which would be likely to require a substantial response. Given the circumstances of the first request, above, the Commissioner believes it is fair to consider that the second request is also similarly designed to cause disruption and annoyance and, furthermore, compliance with two substantial requests submitted on the same day would be likely to create a significant burden in terms of expense and in taking staff away from their regular duties and may therefore also have the effect of harassing the public authority or its staff.

Request No. 3. ICO complaint reference FS50312229

42. The complainant's third request was submitted on 19 December, three days after a piece appeared in the 'Ratcatchers' blog about a management retreat attended by university staff at "*the palatial Peckforton Castle*". It is also similar to a request submitted by another applicant on 3 November 2009¹³, refused under section 12 (costs) on 10 November 2009, and a further series of requests from the same applicant submitted on 11-13 November (which appear to be an attempt to divide the refused request into more manageable pieces. This second series of requests was refused on 11 December 2009 as vexatious under section 14 of the Act).

43. The Commissioner observes that the complainant's request was more limited in scope than the other applicant's various refused requests on the same general subject, to the extent that it focuses on a much shorter time period, and might therefore be argued to be a refinement of the refused requests. The complainant's request may, under such a scenario, be interpreted as an attempt to submit a request for some information which would not be refused either on grounds of cost, or as vexatious. The Commissioner notes, however, that by the time the complainant submitted her request, the other applicant had also requested an internal review of the refusal of his requests as vexatious.

44. Noting the complainant's history and her previous two requests refused as vexatious, the Commissioner acknowledges that the university would be entitled to take into account the comments on the 'Ratcatchers' blog and the evident connection between the other applicant and the complainant, in terms of the requested information and its timing. The

¹³ See

http://www.whatdotheyknow.com/request/total_costs_of_management_retrea#incoming-78958

Commissioner also notes that, as submitted by the complainant, while the request focuses on a shorter time period, it is not necessarily a less burdensome question due to the multiple categories of information listed. When taken in the round in this way and having due regard for the internal review requested by the other applicant, which shows that the previous requests were still open at the point the complainant submitted her request, the Commissioner acknowledges that such repeated pursuit of specific information would be likely to have the effect of harassing the public authority or its staff and may fairly be characterised as obsessive.

45. The Commissioner does acknowledge, in balancing these arguments, that the repeated refusals may, by now, have been interpreted as evasiveness and therefore the complainant may have had a serious purpose in attempting to elicit information which she perceived as being concealed by the public authority.
46. He does not consider this would be sufficient to counter the combined weight of the public authority's arguments in respect of the other four tests in the circumstances. This is partly because the other applicant had, by this time, already requested an internal review of the refusal. The complainant, by intervening in this fashion and submitting a request in her name, could be perceived to be acting at the behest of that other applicant (which would therefore support the university's assertion that the requests are the actions of various parties acting in concert). If, on the other hand, she was acting unilaterally, she appears to have elected to involve herself in somebody else's concerns without reference to them, an action which may fairly be considered manifestly unreasonable.

Request Nos. 4 and 5. ICO complaint references FS50312240 and FS50306518

47. The complainant's fourth request bears little obvious similarity to any previous requests from her, or any other party who submitted requests via WDTK at the material time, with the possible exception of a request submitted the previous day by another of the parties, which related to part-time contracts¹⁴.
48. Similarly, her fifth request is not on a subject raised by any other party at this time. The requests are not manifestly unreasonable on any objective reading and the Commissioner has therefore considered whether the university was reasonably justified in refusing these requests as vexatious in the circumstances. In doing so, he has been assisted by

¹⁴ See http://www.whatdotheyknow.com/request/number_of_academic_staff_on_part#incoming-68756

¹⁵ which stated, at paragraph 21:

"In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another."

49. By the time of the complainant's fourth and fifth requests, the university had now received approximately 70 requests via WDTK and the complainant had submitted three, complex, previous requests on themes also being pursued by other parties.

50. Had these two requests been the first requests submitted by the complainant, the Commissioner would have been likely to conclude that they ought not to be treated as vexatious as there are no evident links to other requesters or the various blogs and newsletters which were in circulation, and enquiries into a public authority's use of public funds are entirely proper. However given the complainant's previous history of requests, and those requests' apparent associations to parties (ie the various bloggers) whose actions are clearly intended to vex the public authority, the university viewed these requests with understandable suspicion and the Commissioner hesitates to make a clear distinction between these two requests and the others solely on the basis of their content. The Information Tribunal in the case of *Hossack v IC* (EA/2007/0024)¹⁶ comments at paragraph 11, that:

"[...] the consequences of a finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in these other contexts, and therefore the threshold for a request to be found vexatious need not be set too high."

51. Consequently, the Commissioner agrees that the university was justified in its application of section 14 to these two requests in the circumstances.

¹⁵ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i125/Welsh.pdf>

¹⁶ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i133/Hossak.pdf>

Request Nos. 6 and 7. ICO complaint references FS50312233 and FS50312235

52. The Commissioner's observes that, in respect of the complainant's sixth request, it contains identical wording (though enlarged and considerably wider in scope) to a request submitted by a different party on 10 December 2009¹⁷ which had not, at the time the complainant submitted her version, been refused by the public authority.
53. The Commissioner would argue that the submission of a request substantially similar to one already submitted elsewhere (and not yet refused or completed, albeit overdue) is suggestive of an intention to cause disruption or annoyance, and may additionally be seen as obsessive.
54. The complainant's seventh request follows the pattern of the preceding six requests in that it is comprised of many parts and sub-sections, likely to require a considerable amount of effort to address. Again, while the examination of the use of public funds is entirely proper and, arguably, the subject (the use of chauffeur-driven cars for senior staff) is justified in the context of a public authority facing considerable cuts to its expenditure, the preceding requests and their context and history are already found to have been vexatious.
55. By this time of the seventh request, the complainant was aware that her previous requests had been refused as vexatious, (in common with many of the other outstanding requests submitted via WDTK). The Commissioner considers that for the complainant to have submitted this last request in the circumstances may suggest that the request could fairly be characterised as obsessive or, in the alternative, to be designed to cause disruption or annoyance.
56. All the requests in this complaint have been submitted via the WDTK website. This has one relevant consequence in that the requests, and the responses of the public authority, are visible to all, and the website has the facility to sort requests by requester, or by public authority. It is therefore reasonable to assume that any person making a request to the University of Salford via this website at this time would have been aware of the other requests being submitted to the university at around the same time. Similarly, many of the requests have been annotated with comments by other parties also engaged in making requests to the university at the time; therefore there is evidence to support an argument that the various parties were aware of the activity of the others.

¹⁷ See http://www.whatdotheyknow.com/request/usage_of_mobile_phones#comment-9104

57. While a requester is not expected to know the extent of a public authority's resources given over to FOI matters, and cannot be expected to assess whether the current volume of requests is significant in terms of its overall FOI workload, the complainant has confirmed to the Commissioner that she was aware of the growing furore on the WDTK site over the university's approach to, and refusal of, numerous requests on similar grounds.
58. The Commissioner has therefore considered whether it ought to have occurred to a reasonable person to exercise some discretion in the circumstances and refrain from submitting further requests at the time. He considers that in these specific circumstances, the complainant could have had a reasonable expectation, at the time she submitted it, that her seventh request would be likely to be considered inflammatory and refused as vexatious. The complainant nevertheless submitted the request and the Commissioner accordingly gives some additional weight to this factor that, in particular, the seventh request can fairly be characterised as manifestly unreasonable.

Do the requests have any serious purpose or value?

59. One characteristic of a vexatious request may be that it seeks to prolong or reopen a matter which has previously been dealt with, or otherwise lacks any intrinsic merit. Conversely, even if a request were to fulfil the four criteria considered above, if it nevertheless had a serious purpose, that might be sufficient to prevent it being considered vexatious. This has also been considered by the Information Tribunal in the case of *Coggins v IC* (EA/2007/0130)¹⁸, at paragraph 20:

"[...] the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious."

60. This factor is therefore considered to be the principal element which a complainant may use in mitigation of his position in the face of a public authority's refusal of his requests as vexatious. The Commissioner has therefore examined the complainant's seven requests to assess the extent of any serious purpose.
61. The complainant has explained that her serious purpose in submitting the requests was *"[...] to scrutinise public money spent on superfluous*

¹⁸ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i119/Coggins.pdf>

limousines for senior staff, staff using mobile phones for personal use, the cost of senior management retreats, the use of credit cards etc." Her engagement with the Commissioner's investigation has been cursory and she offers no evidence to support her contention that the 'limousines' were 'superfluous', nor that mobile phones were being used for personal use, nor any suggestion of improper use of credit cards or inappropriate purpose of management retreats.

62. It is, nevertheless, entirely proper that such matters are subjected to public scrutiny but the complainant's argument, by its use of tendentious language, implies a suspicion on her part that, for example, staff are abusing the privilege of mobile phones or credit cards. She offers, however, no grounds for that suspicion and the requests give the impression of a 'fishing expedition' rather than a serious-minded enquiry into a genuine problem. The Commissioner is not persuaded, therefore, that the serious purpose which the complainant argues will be sufficient, in the circumstances, to outweigh the combined weight of the university's arguments in support of its decision to refuse the complainant's seven requests as vexatious.

Conclusions

63. While the university's arguments carry more weight in the context of some requests than others, the Commissioner considers that the finding that some requests were vexatious but others were not would be, in the wider context, incompatible with the overall argument and accordingly he agrees that the university correctly applied section 14 to the complainant's requests.
64. The Commissioner is aware of the significant criticism which has been directed at the university as a result of its decision to impose what has been seen as a 'blanket' refusal of requests as vexatious. Some of that criticism originates with the same individuals whose complaints have been refused and some of that criticism has been picked up and disseminated on the blog websites mentioned above. The Commissioner therefore recognizes a further possibility: that a requester might deliberately submit a request which he believes will be refused under section 14 of the Act, in order to add to the body of criticism which may be directed at the public authority. While there is no unequivocal evidence to support such a hypothesis in the circumstances, it is reasonably clear that the complainant's last request was submitted in the likely knowledge that her previous requests had been refused as vexatious, and that certain of the earlier requests were submitted at a time when various requests from other parties had also been refused as vexatious.

65. If the Commissioner were to accept the university's argument that the requests were submitted as part of a campaign, he would also agree that one element of that campaign would be likely to involve the generation of the sort of adverse publicity which is clearly evident on the WDTK website. The Commissioner notes that there is clear evidence of a connection between various requests and parties who have authored one or another of various blogs which have been very critical of the university. There is also evidence that several requests have been submitted by a party using a pseudonym and the university has suggested that other parties may also be operating under pseudonyms. There are striking similarities between certain of the complainant's requests and others on the same website by parties who have admitted connections to one or another of the critical blogs.
66. In the circumstances, the Commissioner finds that the complainant's requests were correctly refused as vexatious by the public authority, under section 14(1) of the Act.

Procedural Requirements

Section 17

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50."

The time for complying with section 1(1) is determined at section 10(1) of the Act.

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.”

67. The first and second requests were submitted on 5 December 2009, the third request was submitted on 19 December 2009 and all three requests were refused on 2 February 2010. In the case of the first two requests this is a period of 39 working days, and 29 working days in respect of the third request. The remainder of the requests were refused within the statutory 20 working day period required by section 17(5) of the Act.
68. By refusing the first three requests outside the statutory 20 working day timescale, the public authority therefore breached section 17(5) of the Act.
69. The refusal notice provided the complainant with details of the university's internal complaints procedure, as required by section 17(7)(a), but failed to contain particulars of the right conferred by section 50 of the Act. The refusal notice gave the complainant the particulars of the Information Commissioner's Office but failed to explain her right to bring a complaint under section 50 of the Act. This is therefore a breach of section 17(7)(b) of the Act.
70. The Commissioner notes, however, that the university's internal review does provide satisfactory particulars about the complainant's right to bring a complaint to Information Commissioner's Office.

The Decision

71. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The university correctly applied section 14(1) of the Act to the complainant's seven requests for information.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

- By failing to respond to the complainant's first three requests within 20 working days, the university breached section 17(5) of the Act; and
- by failing to provide particulars of the right conferred by section 50 of the Act in its refusal notice, has further breached section 17(7)(b) in respect of all seven requests.

Steps Required

The Commissioner requires no steps to be taken.

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240



Right of Appeal

72. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 7th day of February 2011

Signed

**Steve Wood
Head of Policy Delivery
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 –

- (c) reasonably requires further information in order to identify and locate the information requested, and
- (d) 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 –

- (e) in respect of which the applicant is to be informed under subsection (1)(a), or
- (f) 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”.

Request for Information

Section 8(1) provides that –

“In this Act any reference to a “request for information” is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.”

Section 8(2) provides that –

“For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference.”

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."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that –

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

Section 12(3) provides that –

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

Section 12(4) provides that –

"The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

Section 12(5) – provides that

"The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated."

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that –

“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 a previous request and the making of the current request.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (i) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section

66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that -

"Subsection (5) does not apply where -

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50."

Annex 2 The requests in chronological order

Request dated 05/12/2009 ICO complaint reference FS50312234

Please provide me with the following information:

1. For the Faculty of Arts, Media & Social Sciences:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

2. For the Faculty of Business, Law & the Built Environment:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

3. For the Faculty of Health and Social Care:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

4. For the Faculty of Science, Engineering & Environment:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

5. For the School of Art & Design:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

6. For the School of English, Sociology, Politics & Contemporary History:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

7. For the School of Languages:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

8. For the School of Media, Music & Performance:

- The number of employees with a salary of £70,000 to £100,000

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

- The number of employees with a salary of greater than £100,000

9. For Salford Business School:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

10. For the School of the Built Environment:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

11. For Salford Law School:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

12. For the School of Social Work, Psychology & Public Health:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

13. For the School of Health, Sport & Rehabilitation Sciences:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

14. For the School of Nursing & Midwifery:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

15. For the School of Computing, Science & Engineering:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

16. For the School of Environment & Life Sciences:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000

17. For the Professional and Administrative Services (Commercial Services, Enterprise & Development, Estates and Property Services, Finance, Governance Services, Human Resources, Information & Learning Services, Planning and Performance, Student Information,

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

Student Life):

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of greater than £100,000
(Please provide this information for each Service separately).

18. For the Strategic Leadership Team:

- The number of employees with a salary of £70,000 to £100,000
- The number of employees with a salary of £100,000 to £150,000
- The number of employees with a salary of £150,000 to £200,000
- The number of employees with a salary of greater than £200,000

Request dated 05/12/2009
ICO complaint reference FS50312236

1. What is the total number of staff in possession of a corporate credit card in each of the last three years, broken down by department/school and grade/job title?
2. What was the total amount spent on all corporate credit cards in each of the last three years? Please supply a university total and a total broken down by department/school.
3. What were the ten biggest transactions on corporate credit cards over the last three years? Please give full details of each of these transactions.

Request dated 19/12/2009
ICO complaint reference FS50312229

1. How many management off-campus residential meetings/retreats/awaydays etc have there been during November and December 2009? By "management" I am referring to staff at Head of School grade (or equivalent) or above. By "residential" I mean events involving the option of an overnight stay off-campus.

If there has been more than one, I would like the following information for each event.

2. Where and when were the event(s) held?
3. How many members of staff attended any part of the event(s)? How many of these stayed overnight?

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

4. What was the total cost of the event(s)?

Please also provide separately the costs of the following:

- a. hire of conference rooms,
- b. accommodation,
- c. catering (including all lunches, dinners, breakfasts, light snacks, canapes, beverages, soft drinks, tea, coffee, water, cakes, biscuits, etc),
- d. transportation,
- e. IT services, secretarial services and stationery,
- f. all other expenses (itemised).

If it is not possible to give details under all of the above headings, please supply as much information as possible.

5. Please give details of any leisure (or "corporate team-building") activities at the event(s), including the cost of these.

6. Were any alcoholic beverages paid for by the University at the event(s), or reimbursed to staff as expenses? If so, what was the total cost involved?

[The complainant added the following element on 20 December 2009]:

I would like to add one further point to my request:

7. Please provide details of any attendees who were not members of staff of the university (for example, guests, University Council members, family members etc) and identify all costs associated with their attendance (itemised as in point 4) which were met by the university.

I expect that this further request will have the same deadline for your response as the original (although of course the university should respond "promptly").

Request dated 05/01/2010
ICO complaint reference FS50312240

I would like to know the following:

1. How many staff on zero-hours contracts are there currently in the University?

2. The numbers of staff on zero-hours contracts by job type (e.g teaching, research, academic related).

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

3. The numbers of staff on zero-hours contracts in each department/school/faculty.

4. The pay and grading policy with regard to staff on zero-hours contracts in each department/school/faculty.

In all of the above, "staff" is to include postgraduate students.

Request dated 19/01/2010
ICO complaint reference FS50306518

1. How much money did the University of Salford spend in total on consultants (i.e. external experts coming in to provide advice or services) in 2007, 2008 and 2009?

2. Please provide a breakdown for each year, showing the purpose or service for which the consultant was paid, how much they were paid, and what the name of the company was. Please indicate for each consultant whether the contract was put out to competitive tender.

Request dated 30/01/2010
ICO complaint reference FS50312233

1. How many members of staff at the University of Salford are currently issued with corporate mobile phones?

2. What was the the total cost of corporate mobile phone bills for the years 2007, 2008 and 2009? How much of these amounts related to actual call usage?

3. What was the total amount staff paid back for making personal calls from university mobile phones?

4. Please provide the cost of mobile phone bills for each of 2007, 2008 and 2009 for the following members of staff separately:

- (i) Vice-Chancellor
- (ii) Deputy Vice-Chancellor, Registrar and Secretary
- (iii) Pro-Vice-Chancellors
- (iv) Executive Deans
- (v) Director of Finance
- (vi) Executive Director of HR
- (vii) Executive Director of Estates

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

- (viii) Executive Director of Information Technology
- (ix) Head of Salford Business School
- (x) Head of the School of Art & Design

5. How much did each of those listed below pay back in 2009 for making personal calls from university mobile phones:

- (i) Vice-Chancellor
- (ii) Deputy Vice-Chancellor, Registrar and Secretary
- (iii) Pro-Vice-Chancellors
- (iv) Executive Deans
- (v) Director of Finance
- (vi) Executive Director of HR
- (vii) Executive Director of Estates
- (viii) Executive Director of Information Technology
- (ix) Head of Salford Business School
- (x) Head of the School of Art & Design

Request dated 20/02/2010
ICO complaint reference FS50312235

I would like some information about the University's transport services for its senior management.

1 How many executive and/or chauffeur-driven cars does the university currently operate?

2 Please provide the make and model of any vehicle(s) and their year of registration.

3 Are vehicle(s) purchased, leased or is there some other arrangement?

4 Who is permitted to utilise the vehicle(s)? (eg Vice-Chancellor, Deputy Vice-Chancellor, Senior Management, etc)

5 Please provide full details of the cost of the lease or purchase of the vehicle(s), and the tendering process undertaken.

6 What was the total cost of operating the vehicle(s) in 2009? Please provide full details, identifying at least the following costs, where applicable:

- insurance
- road tax
- maintenance and servicing
- chauffeur costs (to include all salaries, on-costs, uniforms, expenses etc)

Reference: FS50306518; FS50312229; FS50312233
FS50312234; FS50312235; FS50312236;
FS50312240

- fuel
- breakdown cover/services
- cleaning and valet services
- depreciation
- all other costs

7 On how many days in 2009 were the vehicles used by (a) the Vice-Chancellor (b) the Deputy Vice-Chancellor?