

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 February 2013

**Public Authority:** Imperial College London  
**Address:** South Kensington Campus  
Exhibition Road  
London  
SW7 2AZ

#### **Decision (including any steps ordered)**

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1. The complainant made three requests for information relating to a particular department at Imperial College London (Imperial). Imperial initially refused to disclose this information under sections 40(2) (personal data) and 43(2) (commercial interests) of FOIA. During the course of the Commissioner's investigation, the complainant limited the scope of the issues that needed to be considered. Imperial subsequently disclosed some of the requested information but considered that the remainder was subject to section 14(1) (vexatious request) and section 43(2) of FOIA. The Commissioner has decided that Imperial correctly applied section 14(1) to the requests and does not therefore require any steps to be taken as a result of this notice.

#### **Request and response**

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2. On 23 January 2012 the complainant wrote to Imperial and requested information in the following terms:
  1. *"I would like a copy of all the 1<sup>st</sup> year Progress Tests, and exams and materials for [specified] courses offered at [a specified] Department, during the period 2002-2012, with the individual instructors responsible for the different parts of exams and tutorials mentioned on the documents."*
3. The complainant went on to make a further two requests on 31 January 2012, which asked for information of the following description:

2. *"I would like in addition the lecture notes and revision lectures by [the named lecturer] for [specified] courses offered during the period 2009-2012."*
3. *"In addition, I would like a table of the SOLE [student online evaluation] scores of all the instructors at the [specified] Department from 2002-2012. If the identity of the individuals need to be protected, then you can refer a particular individual with a symbol, but keep the same symbol for the same individual for the SOLE score information over all the years requested."*
4. Imperial responded to request 1 on 20 February 2013. It provided some of the requested information but refused disclosure of the remainder under section 43(2) of FOIA.
5. Imperial responded to requests 2 and 3 on 28 February 2012 and informed the complainant that it was refusing to comply with them in their entirety. In relation to request 2, Imperial claimed the information it held was exempt from disclosure under section 43 of FOIA. Regarding request 3, Imperial considered that the SOLE scores were the personal data of its staff and were subject to the exemption provided by section 40(2) of FOIA.
6. Upon being informed of the complainant's dissatisfaction with its responses to the requests, Imperial carried out an internal review. This was provided to the complainant on 14 March 2012 and upheld Imperial's original reliance on sections 40(2) and 43.

## **Scope of the case**

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7. The complainant contacted the Commissioner to complain about the way her requests for information had been handled. In particular, she disputed Imperial's basis for withholding the information she was seeking.
8. The complainant informed the Commissioner at the outset that the scope of his investigation could be limited to the consideration of Imperial's response to requests 1 and 2, with request 3 being dropped from the complaint. Furthermore, the complainant narrowed the terms of the complaint in relation to request 1 by confirming that she was only interested in the following information:
  - (a) Copies of all first year progress tests during the period 2002 – 2012, with the individual instructors responsible for the different parts of the progress tests mentioned on the documents.

- (b) Copies of the tutorials (rather than all material) for the specified courses offered by the named lecturer (not all instructors) during the period 2009 – 2012 (not 2002 – 2012).
9. Upon being informed of the Commissioner's involvement, and the scope of the complaint, Imperial decided to alter its original position.
  10. In respect of request 1(a), Imperial agreed to the disclosure of the requested information. It noted, however, that the progress tests were only introduced in 2009, which naturally meant it was not in possession of any progress tests before that date. Furthermore, Imperial stated that it did not hold the names of the instructors responsible for the different parts of the tests. For requests 1(b) and 2, Imperial continued to rely on section 43 of FOIA as the basis for withholding information. However, it also introduced section 14(1) as a further ground for refusing to comply with the requests.
  11. The complainant has confirmed that she has received copies of the progress tests described at request 1(a) but contests Imperial's claim that it does not hold information identifying the instructors responsible for the different parts of the tests. However, in the circumstances, she has informed the Commissioner that he is not required to form a view on this point.
  12. The Commissioner's decision therefore arises from the terms of the remaining areas of the complaint, specifically Imperial's refusal of requests 1(b) and 2.

## **Reasons for decision**

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13. The Commissioner addresses below the question of whether Imperial correctly refused to comply with requests 1(b) and 2, looking initially at the application of section 14(1) of FOIA.

### **Section 14 – vexatious requests**

14. Imperial has applied section 14(1) to requests 1(b) and 2, effectively advancing the same arguments for both. The Commissioner has therefore looked at the requests together for the purposes of the exclusion.
15. The Commissioner takes the view that, while a public authority may be able to raise a new exemption during the course of his investigation, he has the discretion to decide whether or not to accept a late claim of section 14 of FOIA. In the circumstances of this case the Commissioner considers it is appropriate to consider the application of section 14.

16. The interpretation of section 14(1) has been considered recently by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)*. The Upper Tribunal decision, which is binding on the Commissioner, found that the term vexatious “in section 14 carries its ordinary, natural meaning within the particular statutory context of FOIA” (paragraph 24). It also agreed with an earlier First Tier Tribunal in the case of *Lee v Information Commissioner and King’s College Cambridge (EA/2012/0015, 0049 and 0085)* which found that the term connotes, “manifestly unjustified, inappropriate or improper use of a formal procedure”(paragraph 27). Broadly speaking, the section is designed to protect public authorities against those who do not use the right to seek information within the spirit of the legislation.
17. In the aforementioned decision the Upper Tribunal also found that, “misuse of the FOIA procedure may be evidenced in a number of different ways. It may be helpful to consider the question of whether a request is truly vexatious by considering four broad issues or themes – (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff). However, these four considerations....are not intended to be exhaustive, nor are they meant to create an alternative formulaic check-list” (paragraph 28). It also emphasised the, “importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).
18. The background to this case is that there is an existing professional dispute between Imperial and the complainant. It is clear that by the time the requests were made the relationship between the parties had broken down due to the dispute which was of a particularly fractious nature. Imperial’s case for finding the requests vexatious is that communications arising from the dispute have imposed a significant burden and clearly demonstrate an obsession with events leading up to and surrounding it. It has also argued that the requests have had the effect of harassing and causing significant distress to a particular member of staff. The Commissioner has considered these arguments, which fall within the four broad themes identified by the Upper Tribunal in the case mentioned above, as well as motive and the value and purpose of the requests.
19. The aforementioned Upper Tribunal decision confirmed that, “the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history

of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor” (paragraph 29).

20. The Commissioner is aware that on occasion there will be a thin line between obsession and persistence. However, he considers that a clear sign of obsessiveness, as opposed to persistence, will be where a complainant continues with a request despite being in possession of other independent evidence on the same issue. The volume of correspondence can also be a sign of vexatiousness. In terms of burden, it has previously been recognised by both the Commissioner and the Tribunal that this is not just a question of financial resources but can include the extent of the diversion and distraction from other work.
21. To support its position, Imperial has pointed to the number of requests and enquiries the complainant has made on the same underlying subject. Using the table produced by Imperial to chronicle the correspondence, the Commissioner understands that the complainant has made a number of freedom of information requests, two Subject Access Requests (SARs) under the Data Protection Act 1998, and sent numerous emails about her requests or to contest the material supplied to her. The effect of the requests is that Imperial has supplied several thousand pages of information to the complainant.
22. Further supplementing Imperial’s position is its contention that the two requests under consideration have only been made in order to pursue allegations that have already been considered and have been found to be without substance. The combination of these factors, according to Imperial, demonstrates that the requests can reasonably be deemed as obsessive and as imposing a significant burden.
23. The starting point for considering the application of section 14 will typically be the date a request was received by a public authority. However, the Commissioner recognises that in many cases a public authority will not be in a position to respond immediately. Therefore, the Commissioner accepts that the consideration of whether a request is vexatious may take place at any point between the date of receipt and the date of response, provided that this is within the statutory time for compliance. In this case the Commissioner has decided it is appropriate to take into account the circumstances as they stood at the respective dates of the responses to the requests, namely 20 (request 1) and 28 (requests 2 and 3) February 2012.
24. It is noticeable that the adoption of these dates means that the Commissioner has had to disregard some of the examples of

correspondence cited by Imperial as demonstrating vexatiousness; these coming after the specified dates. Nevertheless, based on the information provided by Imperial, the Commissioner perceives that by the time of the responses the complainant had been in contact with Imperial on a number of different occasions over a reasonably short period space of time. For example, between 20 January 2012 and 28 February 2012 the complainant's communications included, although not exclusively, five separate information requests (excepting request 1)) and a subject access request made under the Data Protection Act 1998.

25. From his analysis of Imperial's submissions, the Commissioner considers that there are insufficient grounds to find that the requests stray over the line separating persistence and obsessiveness. The Commissioner understands that issues relevant to the aforementioned dispute have been fully investigated by Imperial and the outcome was not in the complainant's favour. He further understands that at the time of the requests the complainant was pursuing an appeal against the outcome of the dispute. In terms of motive, the Commissioner does not feel it is unreasonable in the circumstances of this case that the complainant would seek information from Imperial to inform her ongoing appeal. In reaching this view he has also noted that whilst the allegations at the centre of the dispute have been investigated by Imperial, he is not aware that they have been considered by an independent body to date. Furthermore he accepts that the requests have a serious purpose and value given that the information does appear to be of relevance to that appeal.
26. However, on balance, the Commissioner does accept that that the requests, when considered in the context of the dispute and the associated correspondence, are likely to impose a significant burden. This is as a result of the volume, quick succession and fairly wide ranging nature of the various enquiries and requests made by the complainant. To the Commissioner's mind, the combination of these elements lends weight to Imperial's argument in relation to burden.
27. The Commissioner has next gone on to consider whether the requests would have had the effect of harassing and causing significant distress to a member of staff, specifically the named lecturer. Should this be found to be the case, the Commissioner considers that this factor will play an important part in deciding that one or both of the requests are vexatious.
28. The Commissioner is clear in his view that FOIA, and the access-regime it provides, should never be used as a mechanism by which to escalate openly a feud with, or otherwise abuse, an official at a public authority. In such a scenario, it is only right that section 14 should be applied as a means of protecting the public authority and its staff. Similarly, section

- 14 can be found to apply where a request is likely to be upsetting to staff, regardless of whether this was the intended effect.
29. Imperial has argued that the requests should be seen as a continuation of an attempt to target the named lecturer and cast aspersions on his professional credibility. This campaign, according to Imperial, has had a profound effect on the member of staff's health, morale and productivity. This view has been reinforced by the member of staff.
  30. Imperial has informed the Commissioner that discussions took place with the lecturer about the freedom of information requests. The result of these was that the lecturer has raised concerns about the prospect of allegations being repeated via requests made in reference to the dispute, which has had the effect of causing him further stress and upset. The lecturer has also, according to Imperial, expressed some apprehension about the possibility that the complainant was conducting a personal vendetta against him.
  31. As stated, the Commissioner considers it is fair to conclude that, based on the available evidence, the requests made by the complainant had a serious purpose, with the information being requested central to the issues that are under appeal. The Commissioner also recognises the potential wider public benefit in having the course materials disclosed. It is therefore for the Commissioner to decide whether these factors are sufficiently strong to outweigh the arguments presented in favour of the exclusion. In the Commissioner's view, they are not.
  32. The Commissioner understands that disputes will often have the unfortunate by-product of causing distress to the parties involved. This, in itself, though should not automatically restrict the rights of a party to seek more information about a dispute. However, a key point in this case is the severity of the harassment felt by an employee and the acute nature of the distress that this has caused. Importantly, the Commissioner considers that it was not unreasonable for the member of staff to be affected in this way, bearing in mind the climate in which the requests were made.
  33. This impact, when considered together with the wider burden that the requests would place on Imperial, has led the Commissioner to conclude that section 14(1) of FOIA is engaged.
  34. As the Commissioner has found that the requests are vexatious, he has not been required to consider whether Imperial was entitled to rely on section 43(2) of FOIA to withhold the information described by request 1(b) or request 2.

## Right of appeal

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35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Jo Pedder**  
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