

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2015

Public Authority: De Montfort University Leicester
Trinity House
The Gateway
Leicester
LE1 9BH

Decision (including any steps ordered)

1. The complainant has requested from De Montfort University (the "University") copies of the email correspondence sent/received by an employee of the University between specific dates.
2. The University refused the information on the basis that the request is vexatious in accordance with section 14 of the FOIA.
3. The Commissioner's decision is that the request is vexatious and that the University has correctly applied section 14 of the FOIA to refuse the request. Therefore, the Commissioner does not require the University to take any steps.

Request and response

4. On 23 May 2015 the complainant wrote to the University and requested information in the following terms:

"This is a request under the Freedom of Information Act 2000 (FOIA).

*Please provide me with electronic copies of all of the content contained in **all electronic mails (emails) sent and/or received by [named individual] between 1st July 2012 and 31st December 2012 inclusive.***

When responding please note:

- This FOIA request covers both **internal and external emails;**

- **If you are applying exemptions such as Section 41 or Section 43 to any emails, you should still provide a copy of the email content with only the exempt part(s) redacted;**
- *If files or documents are attached to any of the emails then you should include the content of all attachments;*
- *Where the email is part of an email chain, you should include all of the content of the other emails in the chain to show the context; and*
- *All emails that meet the criteria should be included **regardless of any privacy markings such as (but not limited to) 'personal', 'private' and/or 'confidential'.***

*If you redact any information, please specify **precisely which exemption you are applying in respect of each redacted item.***

If the request exceeds your time/cost criteria for an individual request please regard this request as a series of multiple requests (e.g. emails sent/received per month or per week or per day etc. since 1st July 2012) such that each individual request falls within your cost/time criteria."

5. For ease of reference, the named individual will be referred to as 'the employee' throughout this decision notice.
6. The University responded on 5 June 2015. It deemed the request vexatious under section 14(1) of the FOIA.
7. Following an internal review the University wrote to the complainant on 26 June 2015 and upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 5 July 2015 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case is to be to determine whether the request is vexatious and if the University is correct to rely on section 14 of the FOIA to refuse to comply with the request.

Reasons for decision

Section 14 – vexatious requests

10. Section 14(1) of the FOIA states that a public authority may refuse a request if it is vexatious. The FOIA does not define the term, but it was discussed before the Upper Tribunal in the case of Information

Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).

11. In this case the Upper Tribunal defined a vexatious request as one that is "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
12. In making his decision the Commissioner has obtained submissions from both the complainant and the University to understand the circumstances surrounding the request in order to reach a decision on whether the request is vexatious. The Commissioner will consider their arguments where appropriate.

Burden on the authority

13. The University stated that to comply with the request would place an undue burden upon it. It considered the time it would take it to review all emails to and from the email account of the employee during two six month periods for release and to remove exempt information would be excessive.
14. The University looked at a sample of emails and noted that between 1 July 2012 and 31 December 2012 it holds 2,649 emails in the account of the individual which would all fall within the scope of the request. The University estimated that it would take conservatively, three minutes to review each email and redact any exempt information. This, it said, would represent in excess of 132 hours of work (approximately 19 full working days) to review just this first six month period.
15. The University went onto explain that the request covers all emails received during a total of 12 months which equates to in excess of 5,000 emails. It estimated 250 hours of work to review each email and redact exempt information and this was using an approximate three minutes per email calculation.
16. The University explained the nature of the employee's role. This includes widening participation within the University, disciplinary and academic boards. Therefore, the University considers that a significant number of the employee's emails will contain information that would be exempt from disclosure under section 40 (personal information) and section 43 (commercial interests). It argued that this information would be scattered throughout the requested material.
17. The University concluded therefore that to review all the emails within the scope of the request and to redact the exempt information under section 40 and 43 of the FOIA would be a grossly oppressive burden.

18. The Commissioner noted that the complainant said that he was prepared to compromise further on volume and timeframes. The University was asked to therefore explain whether or not a reduction in the scope of the request would reduce the burden on the University.
19. The University explained that even if the scope of the request was narrowed in line with complainant's proposed dates of 1 July 2012 – 31 August 2012 it would still capture 741 emails. As previously estimated, it would take three minutes per email to review each email and redact the exempt information, then this would still represent more than 37 hours of work (over 5 working days).

No serious purpose or value

20. The University stated that the request has no clear focus and it reiterated that it was not for information but documents in the form of emails. It therefore believes that the request to be a fishing expedition.
21. The University stated that it does not consider the burden of the request to be the most significant reason for declaring that the request is vexatious. The University is of the view that the request is being used to target a particular member of staff for reasons of personal enmity and that this is unaffected by any change in the time period.
22. The University said that it is unable to determine the inherent purpose or value of the request since it is a request for emails rather than information. However, the University considers that it has sufficient information to allow it to reach a reasonable conclusion about the likely purpose of the request.
23. The University stated that it had discussed the request with the complainant. From this conversation and other information available to the University, it had concluded that the purpose of the request is to pursue a personal grudge against the employee named in the request.
24. The University said that it is unaware of any public interest in the employee's role or areas of responsibility that may reasonably lead to this kind of scrutiny and it had advised the complainant that if there was a wider concern about the employee it should use other channels to address this.

Personal grudge

25. The University was asked to provide evidence as to why it believes that the context of the request and the specific nature of the request both point towards a "*personal grudge*" against the employee named in the request.

26. The University provided further evidence of this which can be found in the confidential annex to this notice.
27. The University argued that because the request was for "*all emails sent and received*" without any focus on topic, it suggested a possible fishing expedition. It added that its records show that the complainant had previously requested and had received a link to the University's code of conduct for staff. The University considered that this had raised the possibility that the request might be vexatious.
28. The University said that the complainant had reported in an email relating to his request, that he knew exactly what he was looking for. If so, the University stated that the complainant was free to have requested the specific information he was seeking.

The complainant's position

29. The complainant clarified his concerns about the handling of his requests by the University. He complained that the University has incorrectly applied section 14(1) of the FOIA to his request. Also that the University failed to provide advice and assistance in breach of section 16 of the FOIA.
30. The complainant stated that the University had relied on one of the section 14 indicators for considering his requests as vexatious and it had argued that his request was in pursuit of a personal grudge. He believes that the University had based its refusal notice on an ongoing dispute with the employee and he has argued that there is no ongoing dispute. He considers that in the absence of any evidence to support what he thinks is a false statement, the request is not vexatious and that the University had incorrectly applied section 14 of the FOIA to his request.
31. The complainant has argued the University's reliance on a second indicator – 'fishing' for information. He believes that fishing for information, in any event, does not by itself make a request vexatious.
32. He said that if the University considers his request for information is related to a dispute then it cannot, in his view, claim at the same time that his requests lack clear focus. He added that instead, the University should have adopted a conciliatory approach and worked with him to refine his requests rather than issuing him with a refusal notice.
33. The complainant had referred to the ICO guidance and the factors that are considered when determining if a request is vexatious. The complainant has disputed that he is not seeking information that he already holds and he is not seeking to reopen an issue already dealt with. He added that the University do not know the purpose of his

request and he argued that it cannot be in a position to assess this without further evidence.

34. The complainant said that he had noted the point regarding 'burden on the authority' but he has argued that there is no pattern or history of repeated requests. Also, the complainant has argued that the University do not know his motive and he is not obliged tell them. He said that the University claim to know what his motive is and that if so, in his view, this makes the request unlikely to be vexatious.
35. The complainant has argued that the University should not consider using section 14 for the reason that it cannot see a serious purpose or value behind a request. The complainant is of the view that he is entitled to ask for correspondence to/from a named employee and that a requester's right cannot be refused. Also, he considers that there is no reason to suggest that a request is causing distress or harassment to staff if the request is not aggressive or does not use abusive language.
36. The complainant said that given the nature of his original request and subsequent correspondence, he recognised the potential burden on the University due to the selected time periods. However, he believes that these could have been reduced if the University had negotiated with him.
37. The complainant explained that he was aware that his initial approach covered broad timeframes and that he was willing to consider refining his requests into shorter time periods.
38. He argued that the University could have provided advice and assistance to enable him to make a refined request and in his view the University had therefore breached section 16 of the FOIA.
39. The complainant has said that he is prepared to further compromise on volume/timeframes by reducing the time periods covered to one month periods, include only sent emails and ignore any file attachments to emails. He added that if necessary he could refine the timeframes even further to avoid any excessive burden.

The Commissioner's position

40. The Commissioner understands that the complainant believes that the University had based its decision on an alleged ongoing dispute between him (the complainant) and the employee named within the request. Also that without any evidence to support its findings, the complainant has argued the University's application of section 14 of the FOIA is incorrect.
41. However, having considered the University's submissions, the Commissioner recognises the detrimental impact it would have in

complying with the request which would cause an unreasonable burden on the University.

42. The Commissioner acknowledges the nature of the requested information which is all emails sent/received from an individual over a set time. He also recognises, as outlined in the confidential annex that the University has provided evidence to support its position that the request is in pursuit of a personal grudge against the named employee.
43. The Commissioner considers that given the nature of the request, the volume of information being considered and the evidence supporting the lack of serious purpose or value to the request, that the request is vexatious.
44. The Commissioner therefore finds that the University is correct to apply section 14 of the FOIA.

Section 16 – advice and assistance

45. Section 16 of the FOIA states that it shall be the duty of a public authority to provide advice and assistance to requesters, so far as is reasonable, and where a public authority conforms with the code of practice under section 45 in relation to the provision of advice and assistance, it will be taken to comply with the duty imposed.
46. The section 45 code of practice makes it clear that the duty to provide advice and assistance only applies where the public authority has applied the cost limit at section 12 of the Act or it requires clarification from the complainant in order to respond to the request.
47. The University explained that while ordinarily it would be appropriate to engage the requester to assist them in narrowing the scope of the enquiry, that in this case its findings that the request was vexatious was not limited to the burden it would impose upon it to comply but also to the nature of the request itself. The University further argued that it had considered narrowing the scope of the request, but as outlined above, even doing so, complying with a narrow request would still place a significant burden upon it.
48. In light of this the Commissioner is satisfied that the University has not failed to comply with its duties under section 16 of the Act.

Right of appeal

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. 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.
51. 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

Rachael Cragg
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