



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2014/0260

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50547177
Dated: 15 September 2014**

Appellant: JUDITH FERNADEZ
Respondent: INFORMATION COMMISSIONER
Heard at: FLEETBANK HOUSE, LONDON
Date of hearing: 16 MARCH 2015
Date of decision: 22 April 2015

Before

ROBIN CALLENDER SMITH
Judge

and

ANNE CHAFER and ROSALIND TATAM
Tribunal Members

Attendances:

For the Appellant: Mrs Judith Fernandez

For the Respondent: written submissions from Ms Michele Voznick, Solicitor for the Information Commissioner.

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Subject matter: FOIA 2000

Vexatious or repeated requests s.14

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 15 September 2014 and dismisses the appeal.

REASONS FOR DECISION

Background

1. In 2003 Mrs Judith Fernandez (the Appellant) was a student at the North East Surrey College of Technology (NESCOT). The degree programme on which she was studying was validated by the Open University because NESCOT did not, itself, have degree-awarding powers.
2. The Appellant did not complete the NESCOT-based modules necessary for the award of her degree at the completion of her studies in 2003 (although she believed she had provided on admission evidence of her previous credits) and she appealed against the result that was award to her.
3. In March 2004 – having exhausted NESCOT’s appeal process – she pursued the matter further with the Open University Validation Services (OUVS) in October 2006.
4. Following an investigation by OUVS she was told on 22 May 2007 that her appeal could not be upheld.

5. The Appellant then took the matter to the Office of the Independent Adjudicator to Higher Education (OIA). In July 2007 she was informed by the OIA that her complaint could not be considered.
6. In 2009 NESCOL offered the Appellant the opportunity of completing matters via the Accredited Prior Learning process. That involved recognising - for accreditation purposes - prior qualifications gained by the Appellant to provide the necessary credits to enable her to be awarded a degree.
7. By way of that process the Appellant was awarded her degree with Third Class Honours in 2010. The Appellant believes that the degree certificate was, in effect, forged and has written to the Open University on a number of occasions to that effect.
8. The Open University considers the degree to be genuine.
9. The Open University received further correspondence from the Appellant, her solicitors and her MP in relation to this matter in March 2010, May 2010, October 2010 and January 2011.
10. On 27 October 2011 the Appellant made a Subject Access request under the Data Protection Act 1998 (DPA) to the Open University which included questions about the relationship between the OUVS and NESCOL.
11. The OU told her that a fee was due for a Subject Access Request, and sent her a copy of the Validation Handbook as the answer to her request for information about the relationship.
12. The Appellant paid the fee requested and submitted a further description of the information she required. Her personal data was provided by the OU on 7 December 2011.

13. The Appellant continued to contact the OU in April and June 2012 and, in September 2012, she submitted a complaint to the OU under its whistleblowing procedures.

14. That complaint was investigated by the Vice-Chancellor's Delegate and nine pages of further documents containing personal information held in an unstructured file were located and sent to the Appellant.

15. A further letter from the Appellant was received by the OU in October 2013.

The request for information

16. On 4 March 2014 the Appellant telephoned the OU's Freedom of Information Office to request a copy of the contract between NESOCOT and the OU.

17. Responding to that verbal request the OU, on 6 March 2014, wrote to the Appellant and refused her request under section 14 FOIA.

18. On 6 March 2014 the Appellant wrote to the Director of Legislation and Information at the OU and outlined the information she required. She stated that the request was a repeat of information requested on 27 April 2012 via her solicitor. She asked for:

- information relating to the procedures followed by OU dating from 2004 – 2013;
- all the letters from [individual 1 redacted] to [individual 2 redacted] MP;
- all documents from OU investigations into her case;
- the contract details of joint ventures between the OU Validation Services and NESOCOT; and

- the documented record of student registration for the OU Validation Services award by NESOCOT on the BSc (Hons) in Business Management and Information Technology program 2002 – 2003.

19. On 4 April 2014 the OU wrote to the Appellant explaining that, in 2011 and 2012, it had provided her with all the information it held about her and to which she was entitled under the Data Protection Act 1998 (DPA).

20. It stated that it would not be providing her with any further non-personal information for reasons outlined in a letter dated 6 March 2014.

21. The OU confirmed it was applying section 14 FOIA to the portion of her information request which fell under FOIA.

The complaint to the Information Commissioner

22. Following her complaint to the Commissioner in May 2014 about the OU's response he concluded that the OU was entitled to rely on section 14 FOIA.

The appeal to the Tribunal

23. The Appellant, both in her Grounds of Appeal and her oral and written submissions to the Tribunal for the hearing on 16 March 2015, relied on the following main points:

- She believed that the Commissioner had failed to differentiate between information that was personal to her and information of a more general nature. In relation to her personal information the application of any proportionality test was inappropriate.
- She maintained that any student who had attended an academic institution had a fundamental right to receive full information about grades and marks achieved. To her it was clear that the OU had failed to provide her with this.

- The certificate she had received, unsupported by any conventional transcript of marks, was of little practical use to her. It had not been accepted as valid by other parts of the OU and had resulted in her being rejected for a course at Plymouth University. The Commissioner had erred in failing to have proper regard for the practical and academic importance to her of having that information.
- The information in question was easily available. The OU and NESOT had failed to communicate sensibly and proportionately about her marks. If they had done so the information she required about her marks would have been readily available.
- She had provided to the Commissioner a full bundle of the relevant documentation – paginated and in chronological order – and those documents included ones which were adverse to, as well as supportive of, her case. The Commissioner had made no reference to that bundle at all.
- The Commissioner’s decision appeared to her to be a “wholesale and perhaps verbatim” acceptance of all the OU’s arguments without subjecting them to any criticism or analysis or attempting to balance those arguments against her legitimate requirements
- She set out (pages 14/15 in the Open Bundle) her account of the chronology of events from 2004 - 2014.

Conclusion and remedy

24. At the beginning of the oral appeal hearing the Tribunal outlined to the Appellant the issue that it had to determine, namely whether the OU (and the Commissioner) had correctly characterised her information request on 4 March 2014 as vexatious within the context of section 14 FOIA.

25. The context of that information request carried with it a great deal of the lengthy history of personal dissatisfaction by the Appellant about what she had been awarded at the end of her period of studies.
26. It was clear from the documentation provided for the Appeal that the OU had indeed expended a considerable amount of time on the Appellant's case since 2006. The relevant information request that resulted in it being categorised as vexatious did not come until March 2014, almost 8 years into the chronology of dissatisfaction.
27. The Appellant adamantly refuses to accept that her degree certificate is not a forgery and has taken steps to refer the matter to the OIA and to her MP as well as invoking whistleblowing procedures at the Open University.
28. The Tribunal finds that the Appellant's continuing insistence on pursuing the matter of the validity of her degree certificate over such a lengthy period and with such persistence does demonstrate a pattern of obsessive behaviour.
29. There is evidence in the documentation that OU staff have had to listen to the Appellant becoming highly emotional on the telephone and using derogatory terms when referring to senior officers of the OU. Other documents within the bundle adopt an aggressive tone and an obsessive train of thought.
30. From the evidence before us it would seem that the Appellant has been awarded a degree and the validity of the certificate provided – and the transcript of the marks obtained – is of practical interest only to her.
31. In respect of the *Dransfield* criteria we have reminded ourselves of the guidance given by the Upper Tribunal in that case (and for which publication of the Court of Appeal decision is expected imminently). Specifically Judge Wikely noted:

- [28] Such 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 and the discussion that follows are not intended to be exhaustive, nor are they meant to create an alternative formulaic check-list. It is important to remember that Parliament has expressly declined to define the term “vexatious”. Thus the observations that follow should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.”
- Background and context can be highly relevant. As to burden, the questions of volume, breadth, pattern and duration of requests may be relevant and an individual request – given a broader context - can be vexatious.
- While FOIA is axiomatically motive blind, “the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request” [34].
- Series of requests can sometimes start out innocuously, but fall into “vexatiousness by drift” [37].
- As to serious purpose or value, “the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been exhaustively considered and addressed, then subsequent requests (especially where there is “vexatiousness by drift”) may not have a continuing justification” [para 38].

32. Those final two points are particularly evident in this case.

33. The Tribunal agrees with the OU that the Appellant is seeking to reopen a case that has already been thoroughly investigated and concluded. The request itself forms part of an obsessive campaign that would not resolve the issue of her dissatisfaction with her degree.

34. The request has been correctly characterised as vexatious.

35. Our decision is unanimous.

36. There is no order as to costs.

Robin Callender Smith

Judge

22 April 2015