

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 12 September 2011

**Public Authority:** The University of Lancaster  
(the "University")  
**Address:** Bailrigg  
Lancaster  
LA1 4YW

### Summary

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The complainant made a request for information about the amount of water that the University used and how much it cost. The University explained that it viewed the request as vexatious and would not therefore answer it. It was relying on the exclusion found in section 14(1). The complainant referred the case to the Commissioner. The Commissioner has determined that the request was vexatious and requires no remedial steps to be taken.

### The Commissioner's Role

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

### The Request

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2. On 27 January 2011 the complainant made six separate requests for information. They have been considered by the Commissioner in a connected case **FS50374309**.
3. On 1 February 2011 the complainant made another request for information. This request was worded:

*"I would like to know how much the university [sic], excluding residences, pays for water. If known, how much it uses. I'd like this*

*information for a sample period of the university [sic] - say a month or a year - in the last 2 years."*

This request is the focus of this case.

4. On 3 February 2011 the University issued its response. It explained that it believed that the request in its context was vexatious and, as such, section 14(1) applied.
5. On 3 February 2011, the complainant requested an internal review.
6. The University has told the Commissioner that it did not believe it was necessary to conduct a separate internal review in relation to this request as the factual situation was carefully considered in the review that it conducted for the requests considered in **FS50374309**. This review was carried out on 4 February 2011, and upheld the use of section 14(1). The University failed to tell the complainant that this was its approach.

## The Investigation

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### Scope of the case

7. On 10 February 2011 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  1. the University's internal review process appeared defective; and
  2. it had wrongly characterised his requests as vexatious.
8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

9. On 27 June 2011 the Commissioner wrote to the University with his preliminary enquiries. He received a response on the following day.
10. On 29 June 2011 the Commissioner made detailed enquiries of the University. He received a response on 27 July 2011.

## Analysis

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### Substantive Procedural Matters

#### Section 14(1)

11. Section 14(1) states that –

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

12. As noted above, the University has argued that the request dated 1 February 2011 is vexatious. The complainant disagrees.

13. For this exemption to apply, the Commissioner must consider the situation as it was when the request was received – 1 February 2011. Events that occurred after this date cannot render the request vexatious.

14. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the “Tribunal”) in *Ahilathirunayagam v Information Commissioner’s Office* [EA/2006/0070] (paragraph 32) – that the term vexatious must be given its ordinary meaning, i.e. would be likely to cause distress or irritation. Whether the request has this effect is to be judged objectively. This has been reaffirmed by the Tribunal in *Gowers v Information Commissioner’s Office and London Camden Borough Council* [EA/2007/0114] (“*Gowers*”) (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.

15. The Commissioner has also taken into account the Tribunal’s views in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) (‘*Welsh*’) (paragraph 21) where it stated:

*“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.”*

16. The Commissioner has therefore taken into account the complainant's previous interaction with the University when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context. The University has argued that the request should be regarded as vexatious after considering its context.
17. The Commissioner has issued guidance to assist in the consideration of what constitutes a vexatious request.<sup>1</sup> This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments.
18. The Commissioner generally considers arguments put forward in relation to any 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 has the effect of harassing the public authority or its staff;
  - whether the request can fairly be characterised as obsessive;
  - whether the request has any serious purpose or value; and
  - whether the request is designed to cause disruption or annoyance.'
19. The University has told the Commissioner that it believes the first four of the criteria noted above are satisfied by the request. The Commissioner will consider each factor in turn.
20. When considering the University's reliance upon section 14(1), the Commissioner has also had regard to the Tribunal's decision in *Welsh* at paragraph 26. In that case, the Tribunal considered the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.

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<sup>1</sup> This guidance is called 'When can a request be considered vexatious or requested?' and can be located at the following link: [http://www.ico.gov.uk/~\\_/media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/~_/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

21. He will also consider, should the request be found to have a serious purpose, whether that purpose is so serious that it can outweigh all the other factors that indicate that the request was vexatious and so render the request not vexatious.

**Does the request constitute a significant burden in terms of expense and distraction?**

22. When considering this factor the Commissioner has followed the Tribunal's approach in *Welsh* (paragraph 27). It stated that whether a request constitutes a significant burden is:

*"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."*

23. The Commissioner therefore expects the University to be able to show that complying with the request would cause a significant burden both in terms of costs **and** also diverting staff away from their core functions.

24. The Tribunal in *Gowers* emphasised at paragraph 70:

*"...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor"*

25. The University has confirmed that it was both the history of the requests and this particular request itself that had led to it experiencing a significant burden.
26. The Commissioner will consider the University's arguments about the expense first, before going on to consider the level of distraction.
27. For the request subject to this complaint, the University has explained that it would not have been an easy request to process. Firstly, the request is worded in an uncertain manner in that it specifies non-prescriptive sample periods without it being clear what the complainant was after. Secondly, the request requires an estimated eight hours of work in locating and extracting this information. The work that would be required would require a specialist that understood the workings of the University as it would be complex to separate out the spend on water by it without taking into account its residences, and it did not need to otherwise do this for its business purposes.
28. The University also explained that this request must be viewed in the context of the six requests that were received only five days before. For those six requests that it received, it explained that a conservative estimate was that it would take 43 hours for it to answer them. More

detail about how this estimate was calculated can be found in decision notice **FS50374309**.

29. Finally, the University also explained that the request must also be viewed in the context of the previous history of requests. Prior to the request in this case, and the six requests referred to in the previous paragraph, it had received 15 previous requests from the complainant. Nine of these were in the four months before these requests, while the others were received in earlier years. It estimated that it had spent 53 hours in answering the previous requests.
30. Taking these factors into account, the Commissioner is content that the context and history of the request and the submission of seven complex requests over five days does render them burdensome in terms of expense. Therefore he is satisfied, from the evidence supplied by the University, that the provision of a complete response to the request would involve a substantial burden in terms of expense.
31. The Commissioner has gone on to consider whether complying with the requests would distract staff from their core functions.
32. The University explained that there is a burden in terms of distraction from its core function. This happens in two ways. Firstly, the compliance team was burdened by the high concentration of requests. While, openness and transparency are important concerns, in this case the volume of requests was likely to consume all its capacity and consequently reduce the service that it could provide to other stakeholders. Secondly, the University evidenced that dealing with this request would inconvenience the information holders too. This was due to the nature of the request which asked mostly for numerical breakdowns of information that is not required for the relevant department to function.
33. As noted above, the request asks for an uncertain breakdown of the amount of water used and its cost. The Commissioner can understand that the way the request is framed would render it complicated to answer as it would require considered reflection to ensure that only relevant expenses were included.
34. The Commissioner has considered the seven requests (the six submitted five days previously and the request subject to this case) as a whole. He has considered their wording, distribution and the input that they would require from various members of the University's staff. From this review, he is satisfied that they can fairly be said to constitute a significant burden in terms of distraction.
35. The Commissioner's view is supported by the reasoning of the Tribunal in *Coggins v Information Commissioner* [EA/2007/0130] ("*Coggins*")

that discussed what constitutes *'a significant administrative burden'* and is satisfied that dealing with the request in its context would have contributed to a *'significant distraction from its core functions'* (paragraph 27).

36. Overall, the Commissioner is satisfied that a great deal of the University's time has already been spent dealing with previous requests from the complainant. He notes that the University should indeed offer support to the students in its care. However, he does not consider that the provision of the information requested can be said to be connected to it providing education to the complainant.
37. Assessing all the circumstances of the case, the Commissioner finds that the request dated 1 February 2011, taken in the context of the hours spent dealing with the previous requests and the resulting distraction from the University's core functions, would impose a significant burden in terms of both expense and distraction. It is apparent that the request forms part of a pattern of correspondence which has created a significant workload in the past and would have led to further work had it not been refused on the basis that it was vexatious. He therefore finds in favour of the University on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1) on the facts of this case.

**Does the request have the effect of harassing the University or its staff?**

38. The University has argued that the request has had the effect of harassing itself and its staff. It has explained that it understands that this may not have been the intention of the complainant, but when assessing the effect, intention is not relevant.
39. It explained to the Commissioner that it took this view for the following reasons:
  - the volume and distribution of the requests that have been made;
  - in particular, a number of previous requests had been in relation to Computing where a single member of staff has been required to provide very considerable input; and
  - a number of other requests were focussed on the University undertaking its duty of care and some requests focused on the individual staff who were involved in the standard protocol in this matter. In consequence, those individual staff felt uncomfortable.

40. The Commissioner notes that the requests for information are worded in a cordial fashion. He appreciates that to harass is a strong verb and emphasises that it is the effect of the requests and not the requester that must be considered. It is an objective test: so a reasonable person must be likely to regard the request as harassing or distressing. The Commissioner's guidance states that the features that could make a request have the effect of harassing the public authority or its staff are:

- volume and frequency of correspondence;
- the use of hostile, abusive or offensive language;
- an unreasonable fixation on individual members of staff; and
- the mingling of requests with accusations and complaints.

41. The Commissioner has already noted that the volume and frequency of correspondence was considerable in this case. However, having considered the spread of the requests and what they have asked for, he does not feel that the volume and frequency of correspondence can be said to be enough to amount to harassment by themselves.

42. There is no hostile, abusive or offensive language in this case. In relation to the arguments about fixation on individual staff, while he understands that those individuals felt less than comfortable in the circumstances, the Commissioner does not consider that they amount to an unreasonable fixation in this case.

43. There is no mingling of requests with accusations and complaints in this case. The Commissioner accepts that some complaints and requests often have similar themes, but does not consider that this is the case here.

44. The Commissioner has considered the arguments of both sides and considers that this is a finely balanced factor. He finds that the evidence is not strong enough for him to find in the University's favour and has therefore placed no weight on it.

### **Can the request fairly be characterised as obsessive?**

45. It is the Commissioner's view that obsessive requests are usually a very strong indication of vexatiousness. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.

46. The University argued that these requests should be regarded as obsessive, as:

1. the volume and frequency of the correspondence strongly indicate that the requests are obsessive;



2. the complexity of what is being asked for also exacerbates the burden of the requests; and
  3. the themes of previous requests were also consistent, although this particular request is unique.
47. As above, the Commissioner has noted that the arguments about burden and the complainant's general approach are supported by the evidence. In the Commissioner's view, this level and continual flow of requests demonstrates behaviour of an obsessive nature.
48. The Commissioner has carefully considered where the balance lies in this case and notes that he is considering the situation on 1 February 2011 and the combined effect of receiving the six requests five days earlier. The Commissioner accepts that at times there is a fine line between obsession and persistence and each case should be determined on its own facts.
49. The Commissioner's guidance states that it will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they already have independent evidence on the issue (e.g. reports from an independent investigation). The more independent evidence available, the stronger this argument will be. However, this is not a case where there is any independent evidence on the issue that the request raises.
50. The Commissioner appreciates that there is importance in accountability and transparency where possible. However, he also feels that it is important that public authorities are able to use their resources effectively to promote the public good. Protection should therefore be provided where a sequence of parallel requests become a continuous burden on a public authority's resources.
51. In this case, the Commissioner is satisfied that the complainant's general approach has been obsessive, and he considers that the request has an obsessive quality. The Commissioner therefore accepts that a reasonable public authority would find this request in its context obsessive. As such, he finds in the University's favour on this factor.
52. However, the Commissioner has not placed as much weight on this factor, for he considers that the obsessive behaviour is less pronounced in this case than the burden that has been experienced.

**Does the request have value and/or a serious purpose?**

53. The University argued that the request had no real serious purpose or value. It explained that it had come to this view for the following reasons:

- that it believed that the way the requests were worded meant that they were focussed on matters of very limited public interest;
  - that the statistical analyses and breakdowns of the minutiae are not considered to be of serious value either to the applicant or the public at large; and
  - that the evidence was not required in relation to supporting any complaints that it was aware of.
54. The Commissioner has considered the request as to whether the information that has been sought could be said to have a serious value. He recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to their activities. He notes that transparency in relation to the cost of water is something that may be important to requesters, particularly as the costs may be passed on to the students. Therefore he does consider that this request can be seen to objectively have a serious purpose or value in providing transparency. He therefore finds that this factor favours the complainant.
55. The Commissioner has gone on to consider whether the request's purpose is such as to render it not vexatious. In doing so he has taken into account the Tribunal's comments in *Coggins* (at paragraph 20), where it stated that it:
- "...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. For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action."*
56. Therefore the Commissioner has considered whether the serious purpose can be considered to have sufficient weight to overcome the other factors that he has found favour the University – the significant burden and its obsessive nature.
57. In this instance he is not convinced that sufficient weight can be placed on the serious purpose identified to make it inappropriate to deem the request vexatious in this case. He considers that the cost of water and the amount used by the University buildings is of limited value in

considering accountability and transparency of the University and that the other factors are of a combined greater weight.

**Could a reasonable public authority refuse to comply with request on the grounds that it was vexatious?**

58. The Commissioner recognises that there is sometimes a fine balance between protecting a public authority from meritless applications and the promotion of the transparency in the workings of the authority.
59. The University explained that it had not applied section 14(1) lightly. Indeed its response to the complainant's six requests that predated this request by five days marked the first occasion in over 450 requests that it had received under the Act (from any requestor) where section 14(1) has been used by it. The University has explained that it takes its responsibilities under the Act seriously and that it supports accountability and the democratic process. However, it does not believe it is right for a single applicant to compromise its ability to respond and plan for information compliance in an efficient manner and that this request should be regard as vexatious.
60. The Commissioner has had regard to the Tribunal's decision in *Welsh*, where it commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor mentioned in his guidance to be made out from his guidance for the requests to be correctly characterised as vexatious.
61. In reaching a view on this factor, the Commissioner has considered all the evidence presented in this case, including the history and context of the request. He has concluded that the request satisfied two factors of his guidance – it constituted a significant burden in terms of expense and distraction and was obsessive. Therefore he has found that a reasonable public authority could objectively find the request dated 1 February 2011 vexatious. He therefore upholds the University's application of section 14(1) to it.
62. He emphasises that this determination was made on the circumstances as they existed on 1 February 2011 and that every request should be considered on its own merits. The University must continue to consider the requests and not the requestor should it receive further requests in the future.

## **The Decision**

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63. The Commissioner's decision is that the University dealt with the request for information in accordance with the Act. He considers that the request was correctly characterised as vexatious and that the exemption in section 14(1) of the Act applied to it.

## **Steps Required**

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64. The Commissioner requires no remedial steps to be taken.

## Right of Appeal

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65. 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: 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)

66. 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.

67. 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 12<sup>th</sup> day of September 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Section 1 - General Right of Access

Section 1 of the Act provides that:

- (1) 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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”
- (3) Where a public authority –
  - (a) reasonably requires further information in order to identify and locate the information requested, and
  - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”
- (4) The information –
  - (a) in respect of which the applicant is to be informed under subsection (1)(a), or
  - (b) which is to be communicated under subsection (1)(b),is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”
- (5) 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).”
- (6) 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”.”

## **Section 14 – Vexatious or repeated requests**

Section 14 of the Act provides that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) 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 the previous request and the making of the current request.