

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

### **Decision notice**

**Date:** 26 March 2013

**Public Authority:** Oxford and Cherwell Valley College  
**Address:** Oxford City Centre Campus  
Oxpens Road  
Oxford  
OX1 1SA

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

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1. The complainant has requested details from the Oxford and Cherwell Valley College ("the College") about how many staff have left the College under compromise agreements since September 2011 and the total amount paid out under any agreements during the same period. The College refused to comply with the request as the complainant had made several requests for information previously, one of which was in relation to the same subject matter. The College relied upon Section 14 of the FOIA stating it believed the complaint to be a vexatious one which it considered to be part of an on-going campaign against the College and members of its staff.
2. The College provided detailed information to the Commissioner about a series of requests under both the FOIA and the Data Protection Act 1998 ("DPA") which could be considered distressing, disruptive and harassing in nature. However, insufficient evidence was provided to establish a direct link between the complaint and any campaign against the College. The Commissioner's decision is therefore that the request is not vexatious and he requires the College to take the following steps to ensure compliance with the legislation.
  - It should issue a fresh response.
3. The College must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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4. On 8 June 2012 the complainant requested information of the following description:

*"How many staff have left under compromise agreements since 1<sup>st</sup> September 2011.*

*Total amount paid out for the same period."*

5. On the same date the College responded. It refused to provide the requested information and cited section 14(1) of the FOIA stating it had dealt with previous requests for similar information dated 16 August 2011, 19 September 2011, 6 October 2011 and 5 January 2012. It did not provide any further details as to why it considered the request to be a vexatious one.

## Scope of the case

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6. The complainant contacted the Commissioner on 17 August 2012 to complain about the way his request for information had been handled. He advised that he did not consider his request to be vexatious as he was asking for an update to a request he had made previously. Although his complaint concerns both disclosure of information and the issue of whether or not the requests are vexatious, as the College has only concluded that the request is vexatious this is the only issue the Commissioner can consider in this notice.

## Reasons for decision

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### Section 14 – vexatious requests

7. Section 14 of the FOIA provides:

*"14.—(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."*

8. The Commissioner has issued guidance to assist in the consideration of what constitutes a vexatious request.<sup>1</sup> He will consider arguments put forward 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 requests on the grounds that they are 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 has any serious purpose or value;
  - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
9. It is not necessary for all five factors to be engaged. However these are elements which are commonly encountered and the balance of these factors can be helpful in illustrating the reasons for any decision. Where the request falls under only one or two categories or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to the public authority's claim that section 14 is engaged.
10. The Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes', i.e. it causes irritation or annoyance. In relation to section 14(1), the annoyance must be caused by the process of complying with the request.

### **Consideration of the characteristics of the request as vexatious**

11. The College provided evidence to the Commissioner that it had received a number of requests between 28 June 2011 and the date of the request which it believed were associated with each other to varying degrees and which it concluded were part of a campaign against the College. It acknowledged that the complainant had only filed a relatively small number of requests over this period but because of the nature of some of the requests it considered that there was a sufficient link between the complainant and the campaign it believes is being waged against it. As part of the enquiries the College provided the Commissioner with an analysis as to all the associated requests it had received both under the FOIA and the DPA.

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<sup>1</sup>[http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information/guide/ref\\_using\\_a\\_request.aspx](http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/ref_using_a_request.aspx)

12. The Commissioner has considered his published guidance as to factors to be taken into account as listed in paragraph 8.

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

13. Having reviewed the information provided the Commissioner notes that the College has provided evidence of 27 information requests made under the FOIA and/or the DPA, made between June 2011 and June 2012, that it believes proves that there is an ongoing campaign against it. As noted above, it believes that the request in question in this case is part of this campaign. The Commissioner notes that eight of the FOIA requests have been received from the complainant including the one which is the subject of this decision notice. However, after considering these requests the Commissioner does not consider they have created a significant burden in themselves either in terms of expense or distraction. On the information provided the Commissioner is aware of the burden placed upon the College by all of the requests put together. However, the Commissioner concludes that, on the evidence available to him, there is not a sufficient link to connect the requests of the complainant and the other requests which the College considers to be part of a campaign.
14. The Commissioner is also of the view that if the main issue was the issue of significant burden in terms of expense then section 12 of the FOIA (cost limits exemption) should have been put forward by the College. This would also be the case if the College wished to aggregate the requests from disparate sources where different persons appear to be acting in concert, or in pursuance of a campaign. However establishing a link between the complaint and the campaign would still be an issue.

**Are the requests designed to cause disruption or annoyance?**

15. The College has argued that the requests, which it believes are part of a campaign, have had a significant impact. It is clear that, taken together, dealing with the requests referred to by the College have impacted upon its day to day activities. A considerable amount of time has been spent dealing with the many requests that have been made. However, from the information provided there has not been a sufficiently clear link established between the current complaint which is the subject of this enquiry, the complainant and the campaign that the College believes it is subject to.

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

16. The College has provided the Commissioner with information concerning the effect of the requests it has referred to upon members of staff in the

College. Specifically it has argued that these requests have resulted in some of its staff feeling harassed. However, for these arguments to be applicable in this case, the College would have to show that the request in question in this case, and the other requests it has referred to, are linked in some way. After considering College's arguments, the Commissioner again concludes that there is insufficient evidence to establish that this request is part of a wider campaign against the College. He also notes that taken on its own, the request in question is phrased in a neutral manner and is asking for an update to a request that was made some months previously and which the College dealt with. As such, he does not consider that it can be said that this request has the effect of harassing the College or its staff.

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

17. From the information provided to the Commissioner it would appear that the complainant has made FOIA requests that are loosely connected to the subject matter that is the focus of the other requests referred to by the College. The majority of the complainant's own requests deal with similar or related issues. However the Commissioner is of the view that, on balance, the requests could not reasonably be seen to be obsessive or manifestly unreasonable when taken as individual requests or considered as a whole. The language used within the requests is plain, not excessive and reasonable in tone.

**Do the requests have any serious purpose or value?**

18. In considering the present request of the complainant the Commissioner is mindful of the previous requests made by the complainant. Although most are related in some way the Commissioner considers that the request for an update in this case is a reasonable one given the time that has elapsed since the initial request for this information and the subject matter concerned.
19. The Commissioner is of the view that the College wrongly assessed the complainant's requests as vexatious. Whilst the College has provided evidence that it has received a number of requests over a specific time period, that it believes are linked, the Commissioner is of the view that, on balance, there is not enough evidence available to establish that the request in question is part of a wider campaign against the College. The Commissioner therefore requires the College to issue a fresh response.

## Right of appeal

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20. 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)

21. 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.
22. 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**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**