

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2013

Public Authority: The Governing Body of Sheffield Hallam University

Address: City Campus
Pond Street
Sheffield
S1 1WB

Decision (including any steps ordered)

1. The complainant made a freedom of information request to Sheffield Hallam University for a list of the workplace email addresses of staff who had joined the University since May 2010. The University refused the request under section 14(1) of the FOIA (vexatious requests).
2. The Commissioner has investigated the complaint and found that section 14(1) applies and the University did not have to comply with the request. The Commissioner requires no steps to be taken.

Background

3. The complaint concerns a request made to Sheffield Hallam University for the email addresses of staff who had come to work at the University since May 2010. This was a refinement of a request which had asked for a list of all staff email addresses which was itself a repeat of a request which the complainant had previously made to this University and other higher education institutions in April 2010. The Commissioner issued a Decision Notice in respect of that earlier request in which he had upheld the University's application of the section 36(2)(c) exemption to refuse

the information under case reference FS50344341¹. The Commissioner's decision was subsequently upheld on appeal to the First Tier Tribunal².

Request and response

4. On 16 May 2012 the complainant made the following request to the University which he said was submitted in a "contemporary Scottish dialect".

Hi There Gud FOI Ones

Cos of yon FOI stuff I um wantin fur u to gie me e-mals for folk who have come tae wurk at yur uni since May 2010.

Ta for yon number. ICO facebook is doon the day. I belled the IC lads afore texting u. After LOLing they said "They can't do that. Bring it to us. We can't guarantee the outcome until we formally investigate but your complaint is most likely to be upheld."

5. After the University queried whether this was intended as a formal request for information the complainant contacted the University to confirm that it should be treated as a FOIA request and offered the following "translation":

Dear Hardworking, Extremely Patient and Unrelentingly Courteous FOI Staff

Under the provisions of the Freedom of Information Act 2000 I would much appreciate I you would supply to me a list of the e-mail addresses for staff who have taken up employment with your institution since May 2010.

Thank you for supplying the ICO helpline number. It came in useful as the ICO website was offline for a period yesterday. I telephoned the ICO helpline and repeated your lines of argument to them. After they had stopped alternately laughing and drawing breath they said "They can't do that. Bring it to us. We can't guarantee the outcome until we formally investigate but your complaint is most likely to be upheld."

¹ [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50344341.ashx](http://www.ico.gov.uk/~/media/documents/decisionnotices/2011/fs_50344341.ashx)

² [http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/%5b2011%5d_UKFTT_EA201_10061_\(GRC\)_2011-10-06.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/%5b2011%5d_UKFTT_EA201_10061_(GRC)_2011-10-06.pdf)

Thank you ever so much for all your help in this matter.

6. The University provided a substantive response on 25 May 2012 at which point it said that the request was refused under section 14(2) of FOIA as it was substantially similar to requests he had submitted on 15 April 2012 and 26 April 2010. The University also said that it considered the request to be vexatious and therefore it was also applying section 14(1) of the FOIA.
7. The complainant asked the University to carry out an internal review of its handling of his request and it presented its findings on 29 June 2012. The University now explained that it was withdrawing its reliance on section 14(2) in light of guidance from the Commissioner which clarified that section 14(2) can only be applied where a public authority has previously disclosed the requested information. However, as regards section 14(1), the University said that it was upholding the decision to refuse the request on the basis that it was vexatious.

Scope of the case

8. On 13 September 2012 the complainant contacted the Commissioner to complain about the decision to refuse his request.
9. During the course of the Commissioner's investigation the University said that it was also applying the section 36(2)(c) exemption to the request.

Reasons for decision

Section 14(1) – vexatious requests

10. The Commissioner has first considered the University's application of Section 14(1) which provides that a public authority is not obliged to comply with a request if the request is vexatious. When considering whether a request can be reasonably characterised as vexatious the Commissioner's approach is to consider the context and history of the request to assess whether it would fall into one or more of the following factors.
 - 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 can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - whether the request has any serious purpose or value
11. The threshold for when a request is considered to be vexatious need not be set too high and it is not a requirement for all categories to be relevant to a request. However, 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 a public authority's claim that s.14 is engaged.
12. The University's arguments as to why it believes the request is vexatious and the Commissioner's observations are outlined below, under the relevant headings.

Any serious purpose or value?

13. The University pointed to the manner in which the complainant had chosen to phrase his request as evidence of its lack of serious purpose.
14. The Commissioner would also highlight the fact that when asked whether his request was meant as a formal request for information or as a humorous comment, the complainant said that he wanted the University to change its decision in his previous request (for the email addresses of all staff). If the University refused to do so he said that he wanted his request to stand. This suggests to the Commissioner that the complainant's real purpose is to overturn the University's application of the section 36 exemption to his previous requests rather than a real desire to obtain the information. The Commissioner also notes a comment made by the complainant on receipt of the internal review of his previous request, shortly before he submitted this current request, where he stated that "Well now that our Xmas day battlefield football match is out of the way normal service can be resumed." Again, this suggests to the Commissioner that the purpose of the request is to prove that his interpretation of FOIA is the correct one, rather than obtaining the information.

Designed to cause disruption or annoyance

Has the effect of harassing the public authority or its staff

15. The University said that the complainant's "repeated requests for substantially the same information, repeated negative accusations about the University's previous submission in a case that has been supported

by the ICO and repeated demands that the University change its position on [the complainant's] previous request amount to harassing the University". It said that it also believed that this approach was designed to cause disruption or annoyance.

16. The University also said that aspects of the complainant's emails had "caused annoyance, distress and were felt to be harassing by the member of the University's staff who received them".

Obsessive or manifestly unreasonable

17. The University has argued that the current request is obsessive when seen in the context of the complainant's previous requests, requests for internal reviews and successive complaints and appeals on the same matter.
18. The complainant has previously requested a list of the email addresses of all the University staff and as explained above the Commissioner found that the information was exempt under section 36(2)(c) which was subsequently upheld by the First Tier Tribunal. The Commissioner also understands that the complainant has sought leave to appeal this decision to the Upper Tribunal.
19. The complainant again requested a list of all email addresses in April 2012, immediately before submitting the request which is the subject of this decision notice.
20. In its response to the complainant the University had said that the question of whether a request for this information should be complied with or is exempt information was under consideration and would be resolved by due process under FOIA and so in its view further requests for substantially similar information were unreasonable. The reasonable course of action, it argued, was to allow the process under part V of FOIA to be concluded.
21. The University has said that it inferred from the complainant's correspondence that he intended a future campaign of similar requests and that it believed that his history of submitting freedom of information requests suggested that this was likely.

The complainant's view

22. The complainant contends that the purpose of his request is to obtain the staff email list and not to vex the University. He also said that he disagreed with the ICO's methodology for considering whether a vexatious request, which had been referred to by the University in its internal review. He suggested that his requests were 'justifiably

persistent' rather than obsessive and that he was persisting in the face of what he said was 'previous false and misleading statements made by the University'. As regards any distress or harassment caused to the University the complainant said that this depended on whether the University had previously misled the University and the Tribunal. He suggested that if the University had misled either then any distress caused was the result of their own 'unfairness and lack of professionalism'.

The Commissioner's view

23. In the Commissioner's view the intention of the complainant's current request is to challenge the University's interpretation of the section 36(2)(c) exemption and its previous decisions to refuse his requests for a list of all staff email addresses. It is clear that the complainant wishes to see the full list of staff email addresses and that he would not be satisfied by the disclosure of what one would expect to be a small number of email addresses of members of staff who had joined the University since May 2010. The current request is merely an attempt to show, what the complainant believes, is the University's flawed application of section 36(2)(c) and section 14(2). The Commissioner considers that this amounts to an abuse of the FOI process.
24. The complainant is using the request to reopen issues that have already been debated and considered which is a clear sign that it is obsessive. It is this which makes the request vexatious, together with the harassing effect the complainant's correspondence has had on the University and its staff. The Commissioner is satisfied that section 14(1) applies to this request.

Right of appeal

25. 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
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

Pamela Clements
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