

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

### **Decision notice**

**Date:** 24 March 2014

**Public Authority:** London Metropolitan University

**Address:** 166-220 Holloway Road

London

N7 8DB

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

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1. The complainant has made an information request containing several points relating to London Metropolitan University's (LMU) examination marking procedures which followed on from a previous disclosure from an earlier information request. LMU refused to respond to the request as it considered it to be vexatious.
2. The Commissioner's decision is that LMU has correctly refused the request as vexatious and has therefore correctly applied the provisions of section 14(1).

### **Request and response**

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3. The complainant had made a number of information requests to London Metropolitan University (LMU). In response to one of these requests, LMU provided information to the complainant on 27 September 2013. Following this the complainant made two information requests on 29 September and 1 October 2013, both of which were in response to the information provided on 27 September. The request of 29 September 2013 was within an email commenting on the earlier response and the information requests have been identified as follows:

*"1) With reference to paragraph 1 and tutors pass rates please provide information relating to the number of examination scripts marked by each tutor within each elective and the failure rate within that elective.*

3) A) *When did you adjust the marks as I have done which is required by the regulation.*

b) *In addition, please provide the raw marks for IP and Employment law and also moderated or adjusted marks.*

d) *If you have not adjusted the marks in the manner I have provided, (as it would appear), please provide the exact manner in which you did consider marks and make a consequent adjustment of them. For clarity discussing the marks is merely marking or assessment, it is not moderation.*

4) *In reference to paragraphs 5-6, please provide the redacted information used to monitor trends and anomalies. You have already confirmed that you have never had statistical information across electives and between the years and had to compile this to fulfil my previous FOI request. I therefore require the actual information used in your response to 5&6.*

5) *In reference to paragraph 10, please provide the exact statistical data used in the scrutiny.*

6) *In reference to paragraph 11, please clarify the exact meaning of your disclosure. Does Subject A 0.88 refer to a single mark, a % point of the entire marks available or something else.*

7) *In reference to paragraph 28 & 59. I require the recorded formal reasons for the choice of the moderation employed. I do not require a recital of your regulations. Your regulations require your examiners to record why they selected the 2<sup>nd</sup> marking method that they did. I seek their formal documented reasons. This should be contained in a document. Please provide the response contained in that document."*

4. This request was then followed by a further request on 1 October 2013 for information in the following terms:

*"For question 12 of your last response, you confirm that there is no record of moderation training in the past 3 years. At the relevant time i.e. 2011/12, please confirm when the last time you have a record of moderation training for the tutor/assessor.*

*Furthermore, has there been any moderation training provided to any tutors since the academic year 2011/12?"*

5. On 30 October 2013 LMU provided the complainant with a response to both the request of 29 September and 1 October. In this response LMU explained it was refusing the requests in accordance with section 14(1) of the FOIA as the requests were vexatious.

6. Following an internal review LMU wrote to the complainant on 27 November 2013. It stated that it upheld the decision to refuse the requests as vexatious.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 12 December 2013 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to determine if LMU correctly applied the provisions of section 14(1) by considering the requests in this case to be vexatious.

### **Background**

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9. The complainant was a student at LMU who made a complaint in January 2012 about the outcome of his examinations and an academic appeal in July 2012. LMU agreed to postpone the determination of his appeal to allow him to make his FOI requests to support and inform him in his academic appeal. A number of FOIA requests were made to assist the complainant with his appeal between July 2012 and February 2013. In February 2013 LMU considered it had now provided full responses to his FOI requests and the appeal would be considered as soon as possible after 15 February 2013. Although not accepting full disclosure under FOI had been made the complainant submitted his grounds for appeal. LMU dismissed the complaint but for two areas this was due to the fact that these were being considered as part of the academic appeal meaning that the University's internal procedures had not been completed for those two elements. The outcome of the academic appeal on 27 March 2013 upheld the complainant's appeal in part in that it identified an administrative error in the marking process and corrective action was taken.
10. Following the outcome of the academic appeal the complainant has continued to make FOIA requests to LMU and has sought a judicial review. On 8 May 2013 the complainant served LMU with a judicial review pre action protocol letter seeking to challenge LMU's decision in the academic appeal. LMU responded on 22 May 2013 and agreed to offer a full and comprehensive reconsideration and review of the issues raised in the complainant's academic appeal and complaint and provide him with a single document setting out its full reasoning and final decision in respect of each aspect of his complaint and academic appeal.

**This offer of the review was made by LMU following earlier correspondence between LMU and the Office of the Independent Adjudicator for Higher Education (OIA) at the point when the outcome of the two issues in his complaint which were being considered in the academic appeal were still outstanding. This offer of a review has not been accepted by the complainant and his application for a judicial review was issued on 3 June 2013 but is currently stayed to allow determination of the complainant's complaint to the OIA which is still ongoing. Reasons for decision**

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11. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
  12. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
  13. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) the harassment or distress of and to staff. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather it stressed:  
  
*"the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious request."* (paragraph 45).
  14. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the
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request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. LMU identified several indicators as being present within the request. It has provided arguments that the request was obsessive, was designed to cause disruption or annoyance, was creating a burden on the public authority and it was causing a disproportionate effort to respond to. The Commissioner has considered each of these factors.

### **Obsessive request**

17. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
18. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
19. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.

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[http://www.ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

20. In this case, LMU has explained that between July 2012 and February 2013 in the time preceding the academic appeal, the complainant made ten requests for information under the FOIA. These requests all related to information on the course at LMU and examinations that were the subject of the academic appeal.
21. LMU has explained that despite the conclusion of the academic appeal on 27 March 2013 the complainant has continued to make requests for information which often contain multiple questions. From July 2012 to the date of the requests which are the subject of this decision, the complainant submitted 22 requests for information which LMU provided responses to. LMU has outlined the nature of these requests and the Commissioner notes that they were either directly related to the LMU course which was the subject of the investigation into the examination marking or on the broader subjects of examination moderation, individual scores, statistical information on results, tutors success rates and action taken against tutors. Whilst there is some variation in these subjects they are all on the general topic of LMU examinations, how they work and are moderated and what steps are taken to ensure accuracy and account for errors.
22. The Commissioner accepts that the volume of correspondence, including information requests is persistent. It is clear that responding to one request has not resolved the matter and has led to further requests for information. The two information requests in this case overlapped and were both made in response to information which had already been provided in response to a previous request. LMU has provided examples of correspondence with the complainant which refer to previous emails and statements in previous emails which the Commissioner accepts are demonstrative of the overlapping nature of the requests.
23. Of particular relevance is an earlier decision notice<sup>3</sup> regarding a request from this complainant in which LMU did provide information and it was noted by the Commissioner that the complainant had indicated he was satisfied by the information provided. This information was provided to the complainant on 27 September 2013 and the two requests considered in this decision notice were then made in quick succession to LMU of the back of the information that was provided in response to the previous request and decision notice.
24. The complainant has argued that his continuing responses have related to subsequent issues that have only come to light through the disclosure

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<sup>3</sup> ICO reference FS50495750

of information in response to his requests. He has also stated that there is no evidence the matter will be ongoing as he will not be satisfied. To illustrate this point he has explained that the last 59 part request of 27 September has only resulted in a further request relating to 10 points.

25. Whilst the Commissioner accepts that the complainant has, in this case only asked 10 questions in follow-up, the history of the requests has shown a pattern of requests which indicated that responding to one request has led to further requests. Although the follow-up requests may be shorter than the original requests, further requests have generally followed each disclosure. The Commissioner acknowledges that in recent correspondence with him the complainant has indicated that he considers the matter is drawing to a close and that he does not anticipate making further requests after these latest ones have been satisfied. However the Commissioner remains unconvinced this will be the case. In this same recent correspondence the complainant has accepted that whilst he has been satisfied with previous responses received these responses have naturally led to further questions which were of public interest.
26. The Commissioner also considers it important to highlight that despite the offer of a review LMU has still effectively concluded its own internal investigation into the matter and taken corrective action to rectify the error it found. At this stage the issue is with the Office of the Independent Adjudicator for Higher Education who is considering the complaint. As such LMU argues it has complied fully with its own procedures and the Commissioner acknowledges that the persistent requests being made despite the fact that LMU has exhausted its own procedures demonstrate that the requests are going beyond the point of persistence.
27. The Commissioner therefore accepts that the continued requests to LMU, taking into account the context and background to the request, have reached the stage where they can reasonably be described as obsessive.

### **Burden of the request and the disruption to the public authority**

28. LMU has explained that the complainant's contact with the University has *"become increasingly difficult, such that there is now a formal embargo on him speaking with anyone other than the University Secretary ... It is not uncommon for the University to receive five or six telephone calls, to different offices and staff on the same day and emails are received almost daily raising new issues."*
29. LMU has stated that the requests have placed a significant strain on its core functions and detracted from staff dedicating time to performing



key duties. LMU explained that a single member of staff had been dealing with the complainant's requests but due to the frequency and length of the requests this had inhibited the member of staff's ability to perform the elements of their job and had required liaison with other areas of LMU. These other areas of LMU have then also suffered a detriment by diverting resources from teaching and administrative duties. The Commissioner is aware that when investigating a previous response by LMU to an FOIA request<sup>4</sup> the University had provided evidence that it had taken over 32 hours to locate, retrieve and extract information relevant to this one request which comprised of 27 questions. LMU has stressed that this is not an isolated case as many of the requests have also contained long lists of questions.

30. The complainant has argued that the information he is requesting should be readily available to LMU as it is part of its moderation contract with students and as such it is difficult to see how it would be burdensome or create a disruption to the public authority to response.
31. The Commissioner can clearly see that the requests sent by the complainant are at times lengthy and will require considerable time to provide responses to. He notes the complainant's comments that the information should be held by LMU and available and this may well be true but there is no argument from the University that the information is not held or that it cannot be provided, the argument is that it would create a burden.
32. In particular the request of 29 September as set out in this decision notice contains multiple parts and was based on an earlier 14 page response to a 59 point request. He is therefore of the view that there is sufficient evidence to suggest that there is a burden on the public authority's resources in responding to these requests and continuing to do so, even if the information is readily available it will need to be located, extracted and compiled into a response. He is not minded to accept that the requests have been made with the intention of causing disruption or annoyance as he does not consider this has been sufficiently evidenced, although he acknowledges that disruption may have been an unintended consequence.

### **Disproportionate effort**

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<sup>4</sup> ICO reference FS50501411



33. When assessing whether a request or the impact of dealing with a request is justified and proportionate the Commissioner considers it helpful to assess the purpose and value of the request.
34. LMU has demonstrated that there have been a large number of requests from the complainant on similar related subjects. LMU has also explained that the requests have been made in addition to "*protracted question and answer correspondence*". LMU states that it has already provided the complainant with an extensive amount of correspondence which the Commissioner accepts has been sufficiently demonstrated in the responses it has seen from LMU.
35. It is the Commissioner's view that the complainant did have a serious purpose to his requests when he was attempting to access information which was of relevance to his complaint with LMU and his academic appeal which was at the time open and ongoing and he considered was likely to uncover some wrongdoing on the part of the public authority. However, LMU has explained that it has completed its investigation and its internal procedures for dealing with these matters, taking corrective action.
36. The Commissioner notes that after the conclusion of the academic appeal the continuing requests at a point when the matter has been referred to an independent adjudicator and the offer by LMU to provide a full review has not been responded to would not seem to still have any serious value as LMU has concluded its investigations and further requests will not result in any further action by LMU or any more investigation which may uncover any further failings.
37. LMU has used questions 3A and 3D of the request of 29 September 2013 to illustrate this point. These questions are arguing points about LMUs Academic Regulations and raising issues which have already been fully considered by LMU both during the University's investigation and academic appeal and by the Commissioner during his earlier investigation and subsequent decision notice. LMU considers this to be indicative of the rest of the requests of 29 September and 1 October in that they lack proper motive and purpose and are not raising new issues.
38. In addition to this, LMU argues that the information which is being requested is part of personal campaign which is specific in nature and it is therefore difficult to see how the provision of this information would be of any serious value as it will not result in the disclosure of information which would be of any wider interest. The Commissioner has considered the purpose of the requests of 29 September and 1 October 2013 in the context of the other correspondence and taking into account

the history of the requests. He does not consider that the most recent requests have any serious purpose or value.

39. The requests do not appear to be likely to result in the provision of new information which will be of any wider public interest and they will not lead to the reopening of LMUs academic appeal as LMU has concluded its investigations and exhausted its internal procedures. He notes that the ongoing investigation by the OIA will be likely to address the public interest concerns the complainant has about LMU not complying with its academic regulations. As such, the Commissioner has concluded that whilst the requests did originally clearly have a serious intention behind them he considers they no longer have a sufficient value or purpose to justify the disproportionate effort in terms of burden on LMU that would occur from responding.

### **Conclusion**

40. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that LMU was correct to find the request vexatious. He is satisfied that the request is obsessive and burdensome and there is a lack of serious purpose and, as such, the effort in dealing with the request would be disproportionate. The Commissioner therefore finds that section 14(1) has been applied correctly in this case.

## Right of appeal

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41. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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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