

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

### **Decision notice**

**Date:** 7 December 2015

**Public Authority:** The Governing Body of the University of Bolton

**Address:** University of Bolton

Deane Road

Bolton

BL3 5AB

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

---

1. The complainant requested from the University of Bolton ("the University") copies of minutes and papers for a meeting of its Board of Governors in November 2014. The University applied section 14(1) to the request and section 21(1) to part of the request.
2. The Commissioner's decision is that the University has incorrectly applied section 14(1) to the whole of the request and has incorrectly applied section 21(1) to part of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - In relation to the complainant's request for the Financial Statements accompanying the agenda for the Board of Governors' meeting, to provide the complainant with the information to which it has applied section 21(1).
  - In relation to the remaining parts of the request, to provide the complainant with a fresh response under FOIA, which does not rely on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the 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

---

5. On 2 June 2015 the complainant requested the following information under FOIA:

*"I am now writing to make a further request under the terms of the Freedom of Information Act for Board minutes and papers as follows:*

- the agenda for the Board meeting held on 12th November 2015*
- the minutes of the Board meeting held on 12th November*
- the Financial Statements accompanying the agenda of the Board meeting held on 12th November in the form that they were submitted the board for that meeting.*

*Please note that in the case of the Financial Statements I am specifically requesting them in the form they were sent to Board members for the meeting of 12th November. I am aware that the final version is available on your web site, but this document was amended after the Board meeting."*

6. On 11 August 2015, the University sent the complainant a statement prepared by its solicitors. This linked his request to a campaign related to the dismissal of two members of staff and indicated that it would not be responding to his request.
7. Following the involvement of the Commissioner, the University provided the complainant with a new response on 25 September 2015. It refused to provide the Financial Statements on the basis that this information was exempt from disclosure under section 22. It also informed the complainant that it believed his request was vexatious under section 14(1).
8. The University subsequently reviewed its decision and informed the complainant of the outcome of its review on 21 October 2015. Following the complainant's representations that he had intended his request to relate to a Board of Governor's meeting in 2014, not 2015 as he had accidentally stated, the University confirmed that it had interpreted his request as for information relating to the Board meeting which took place in 2014, rather than 2015. It informed the complainant that it had applied section 21 to his request for a copy of the Financial Statements accompanying the agenda for the Board of Governor's meeting. It went on to state that it believed that his request was vexatious under section 14(1).

## Scope of the case

---

9. The complainant contacted the Commissioner 11 August 2015 to complain about the way his request for information had been handled, specifically that the University had not provided the information that he had requested.
10. The Commissioner considered whether the University was entitled to rely on sections 14 and 21(1) to refuse to provide the requested information.

## Reasons for decision

---

### Section 14 – Vexatious request

11. The University argued that section 14(1) was applicable to the complainant's request.
12. Section 14(1) provides that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"*
13. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request if it is vexatious.
14. The term "vexatious" is not defined in FOIA. However, the Upper Tribunal in *The Information Commissioner v Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013)* took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
15. The Upper Tribunal's decision establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious. The Commissioner's guidance on section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. In its decision, the Upper Tribunal emphasised the need to protect public authorities' resources from unreasonable requests when it defined the purpose of section 14 as follows:

*"Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...The purpose*

*of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..." (paragraph 10).*

## **The University's arguments**

### **(i) The request was made as part of a campaign**

17. The University informed the Commissioner that since February 2015 it had been subject to a vexatious and sustained vendetta campaign collectively orchestrated by a small group of individuals, both internal and external to the University. It explained that following the commencement of the campaign it did respond to six requests for information, including one from the complainant which appeared to be related to the campaign. It referred to two other complaints that the Commissioner is investigating where it had applied section 14(1) to requests by other individuals which it believed were linked to this campaign.
18. The University went on to explain that, as part of the vendetta campaign, it had received to date a total of 28 requests from 12 individuals. The request from the complainant was submitted during the relevant time period, his first request was submitted on 31 March 2015 and his second request was submitted on 2 June 2015. The University was of the view that the complainant's request should not be considered in isolation but in conjunction with the other requests as part of a wider pattern of collective vexatious behaviour.
19. The University considered that the evidence it had presented demonstrated that there was an association between the requests, derived not only from the timing but also due to the similarities in the information requested.
20. The University explained that it was of the view that the complainant's request had been made in the context of the vendetta campaign. He had no previous history with the University in making use of the Freedom of Information Act up to this point and the University believed that the request were not a coincidence of timing.

### **(ii) The significant burden of the requests in term of expense and time**

21. The University explained that as a result of its belief that the complainant's request was part of a wider campaign agenda, it had aggregated his request with others received from those who it considered had been collectively acting in pursuance of the campaign.

22. The University informed the Commissioner that in aggregating the series of requests it had estimated that the cost of compliance in respect of staff time required to determine, locate, retrieve, collate and prepare the information requested would exceed the appropriate limit for educational institutions and would have placed a significant burden on its resources in terms of staff time and expense.
23. The University stated that, as a small educational institution, it did not have a dedicated Freedom of Information officer or team of Freedom of Information officers, and responding to any request was a duty that was undertaken by staff members in addition to their existing roles. It emphasised that the effect of this additional burden and distraction to performing their other duties should not be underestimated.
24. The University noted that it had to date already spent a significant amount of time and associated cost responding to this and other requests and complaints submitted by those who had been collectively orchestrating the campaign – the distraction to its core business could not be underestimated and as a statutory body and exempt charity this was simply not sustainable or justifiable. The University asserted that this was an inappropriate misuse and abuse of the FOI process to further the collective vendetta campaign.

**(iii) The request was designed to cause disruption and annoyance**

25. The University informed the Commissioner that it recognised and acknowledged that a person was fully entitled to make a request that might incidentally cause annoyance. However, in this context, the University strongly asserted that the primary purpose of the 28 requests submitted was to be provocative, cause annoyance and irritation and disrupt the workings and operation of the University by seeking to attack the senior management team and Board of Governors with untrue and unfounded allegations, the latter having all the hallmarks of a personal or political vendetta. The University contended that the intent and extent of the campaign activities were evident in the information provided in its letters to the ICO dated 30 September 2015 and 27 October 2015 which related to the other two complaints being investigated by the Commissioner.

**(iv) The request lacks any serious purpose or value**

26. The University submitted that any legitimate pursuit or serious purpose that the complainant may have had in submitting his request could be argued as redundant as the information requested is, and was already, in the public domain. It subsequently acknowledged that the agenda and minutes for the meeting of the Board of Governors were not publicly available on its website.

27. The University emphasised that, as it had previously stated, several indicators were considered in arriving at its decision including the wider context in which the complainant's request was made as part of a wider campaign of different requesters acting jointly requesting the same and/or similar information in order to disrupt the organisation.

### **The complainant's arguments**

28. The complainant explained to the Commissioner that he had a long term professional interest in University governance, particularly those aspects relating to the setting of senior staff remuneration. He informed the Commissioner that he had served as an independent (i.e. non staff/student) University Governor for 12 years, and during that time have been, inter alia, a member of its Governance and Nominations committees and chaired a quinquennial review of the effectiveness of the University's governing body. He went on to explain that he had submitted evidence, in a personal capacity, to the organisation that prepared the Scottish Universities Code of Good Governance and he had also submitted comments on the draft Scottish Good Governance code regarding remuneration committees and the reporting of senior staff remuneration which were subsequently incorporated into the code. He explained that he was currently preparing evidence to submit to the Scottish Parliament committee that is scrutinising the progress of the Higher Education Governance (Scotland) Bill.
29. The complainant informed the Commissioner that he believed that the process followed by the University of Bolton's Governing Body in setting the remuneration and benefits of its Vice Chancellor and the extent to which only part of its governing body was involved, provided a valuable insight into the range of alternative approaches to University governance that exist and allowed comparisons to be drawn on their effectiveness and the extent to which they protect the public interest.
30. The complainant went on to explain that the University had attracted considerable interest in the press in agreeing to make its Vice Chancellor a substantial loan to purchase a house. He believed that it was in the public interest (rather than of interest to the public) for the process by which the decision was made to be disclosed.
31. The complainant assured the Commissioner that he had made the request as an individual, that he was not acting in any way as part of a wider campaign and that no other person or organisation was aware of the information that he had requested.
32. The complainant noted that, whilst the Act was applicant blind, he had been careful to provide his physical address to the University, rather than just an email address, so as to allow it to reassure itself that he

was not using a pseudonym and for it to be able to find out his biographical details should it have wished. These could readily be found on the internet by googling his name. He pointed out that, in particular, his background could be ascertained from his LinkedIn profile which could be quickly found by googling his name and his physical address. The complainant subsequently informed the Commissioner that, in this regard, he noted that according to his LinkedIn log "someone from the University of Bolton" had reviewed his profile. He argued that his LinkedIn profile clearly showed his interest in, and experience of, University governance and had been publicly available ever since he became a University Governor. The complainant believed that it provided more than enough information about him to show that his request was bone fide.

## **The Commissioner's view**

### **(i) Whether the request was made as part of a campaign**

33. The University argued that the complainant's request should be seen as part of an orchestrated campaign against it, organised by a small group of individuals, inside and outside the University.
34. As regards the issue of requests linked to campaigns, the Commissioner's guidance on section 14 states that:

*"If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious."*  
(paragraph 89)

35. The guidance goes on to state that:

*"The authority will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence an authority might cite in support of its case are:*

- *The requests are identical or similar.*
- *They have received email correspondence in which other requesters have been copied in or mentioned.*
- *There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.*

- *A group's website makes an explicit reference to a campaign against the authority.*" (paragraph 90)

36. The Commissioner notes the University's belief that the complainant made his request as part of an organised campaign. He also notes that the University has, in relation to other complaints that the Commissioner is investigating, provided evidence to him of the potential involvement of specific individuals in a particular campaign group which has been seeking to publicise certain matters related to the University. However, in relation to this case, the Commissioner has seen no evidence which would expressly link the complainant to that campaign group. The University's case is therefore reliant on establishing that the timing and subject matter of the complainant's request were such as to imply he was involved in the campaign against the University.
37. In addition to the complainant's previous request of 31 March 2015 for a copy of the minutes of the Board of Governors' meeting of 1 October 2014, the University pointed to four other requests from other requesters that it believed were for similar information to that requested by the complainant. These requests were for:
- (i) confirmation that the Chair of the Board of Governors signed off the financial arrangements between the University and the Vice Chancellor (sent on 25 May 2015);
  - (ii) details of honorary degrees, honorary appointments and contracts awarded by University to members of the Board of Governors that attended its meeting on 1 October 2014 (sent on 28 May 2015);
  - (iii) details of the travel expenses of Chair of the Board of Governors (sent on 8 June 2015); and
  - (iv) the minutes for the Board of Governors' meetings (sent on 11 September 2015).
38. The Commissioner notes that the complainant's request was for information which was connected to the University's Board of Governors approval of a bridging loan of nearly £1 million to its Vice Chancellor to assist him in purchasing a house near to the University. He is aware that there was extensive coverage of this matter in both the local and national newspapers. In these circumstances, it seems to the Commissioner that the University should have expected to receive a significant number of requests for information linked to this issue and that it would be likely that these requests would be submitted in a period following the publicity in the media about it. In particular, it seems highly likely that there would have been an interest amongst

members of the public in obtaining copies of the minutes of the meeting at which the bridging loan was approved and details of how the University would deal with this matter in its accounts. The Commissioner is of the view that it does not follow that any requests of this nature would necessarily have been made by people as part of a campaign against the University.

39. The Commissioner is not persuaded that just because the complainant's request was similar in nature to a small number of other requests that were made to the University within a particular timeframe, this is sufficient evidence to establish that the complainant made his request in furtherance of a collectively orchestrated campaign of disruption aimed at the University, particularly given the inevitable public interest in the matter to which his request relates. Consequently, the Commissioner is not satisfied that the University was entitled to consider the complainant's request to be part of the campaign which it identified.
40. If the complainant's request is considered in isolation, outside the context of the other requests received by the University which it had linked to his request, the Commissioner does not accept that responding to it would have been likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the University or its staff. He has therefore determined that section 14 is not applicable to the complainant's request.

### **Section 21 – Information accessible by other means**

41. The University argued that section 21(1) was applicable to the part of the complainant's request that was for the Financial Statements accompanying the agenda to the Board of Governor's meeting in November 2014.
42. Section 21(1) provides that:

*"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."*
43. The University informed the Commissioner that it believed that section 21(1) was applicable as the difference between the Financial Statement for 2013-14 as presented to the Board of Governors and the Financial Statement 2013-14 as published on its website was small. It explained that the only difference was that an appendix number from the front sheet had been removed, one word had been changed on page 8 and an additional explanatory narrative had been added in relation to the Pension Scheme on page 41.
44. The Commissioner notes that the complainant stated in his request that *"...in the case of the Financial Statements I am specifically requesting*

*them in the form they were sent to Board members for the meeting of 12th November”.*

45. The Commissioner’s guidance entitled *“The rights to recorded information and requests for documents”* deals with issue of how public authorities should handle requests similar in nature to that made by the complainant. It states that:

*“11. An authority should treat any request for a document as a valid request for all of the recorded information in that document.*

*12. Most documents usually contain recorded information over and above the actual wording, such as the design, layout and style of writing. This means that, in most cases, the only practicable way to accurately communicate all the information to the requester is to provide a copy of the original document.”*

46. The Commissioner notes that a copy of an original document may also contain additional information over and above that mentioned his guidance.
47. The Commissioner’s view is therefore that the copy of the Financial Statements which is available on the University’s website is not a copy of the Financial Statements in the original form that it was sent to the members of its Board of Governors, as requested by the complainant. Consequently, he has determined that section 21 is not applicable to this information.

### **Section 10 – Time for compliance with the request**

48. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and, if so, to have that information communicated to him, subject to the application of any relevant exemption. Section 10(1) of FOIA provides that this must be done *“...not later than the twentieth working day following the date of receipt.”*
49. The Commissioner notes that the complainant made his request on 2 June 2015 and that the University did not provide a response until 11 August 2015. He has therefore determined that the University breached section 10 of FOIA by not providing a response within 20 working days of receipt of the request.

## Other matters

---

50. The Commissioner notes that the University has adopted the model publication scheme for higher education institutions approved by his office. A publication scheme, as the University explains on its website, is essentially a guide to the information a public authority routinely makes available to the public. The purpose behind publication schemes is to help the public understand what publicly funded bodies, such as Universities, do and how they do it.
51. The Commissioner has produced a definition document for higher education institutions, which is available on his website. This gives examples of the kinds of information that he would expect universities to provide in order to meet their obligations under the model publication scheme. Under the section headed "How we make decisions", the guidance makes clear that minutes of formal meetings where key decisions are made about the operation of a higher education institution should be available for the current and at least the previous three years. It goes on to give examples of this class of information which includes agendas, officers' reports, background papers and minutes from meetings of the governing body.
52. The Commissioner notes from his investigation that the University does not publish the minutes of the meetings of its Board of Governors on its website and that members of the public who wish to see copies of the minutes need to make a request to the University for those minutes.
53. The Commissioner suggests that it would be advisable for the University to review what information it currently makes available to the public as part of its publication scheme to ensure that this is in accordance with his published guidance.
54. The Commissioner notes that ensuring information is routinely made publicly available may not only be of benefit to members of the public but may also be of benefit to the University in terms of reducing the amount of requests for information that it receives and, consequently, the amount of time spent by staff handling requests.

## Right of appeal

---

55. 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: 0870 739 5836

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)

56. 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.
57. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**