

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 July 2018

Public Authority: University of Oxford
Address: University Offices
Wellington Square
Oxford
OX1 2JD

Decision (including any steps ordered)

1. The complainant has requested information from the University of Oxford ('the University') about its admissions process for its undergraduate medicine degree course. The University has categorised the complainant's request as vexatious under section 14(1) of the FOIA and has refused to comply with it.
2. The Commissioner's decision is that the complainant's request is vexatious and the University is not obliged to comply with it.
3. The Commissioner does not require the University to take any steps to ensure compliance with the legislation.

Request and response

4. On 29 August 2017 the complainant wrote to the University and requested information in the following terms:

"Between 2005-2012 Oxford University used the UKCAT-based admissions process for the undergraduate medicine degree course A101.

It has been declared that hundreds of exemptions/waivers have been variously issued nationally for the UKCAT on grounds of disability and medical conditions, and other grounds.

In 2010 the UKCAT was completely exempted/waived at Oxford University for some people on grounds of financial status and nationality.

In 2012, Oxford University replaced the UKCAT with the BMAT for A101 admissions (and already used the BMAT for A100 admissions).

(1) Please provide information detailing how many exemptions/waivers were issued for the UKCAT for A101 (Oxford University) each year between 2005 and 2012 (inclusive)?

(2) Please provide information detailing how many exemptions/waivers have been issued (and on what grounds) for the BMAT each year between 2012 and 2017 (inclusive), for (i) A101 (Oxford University) undergraduate medicine? and (ii) A100 (Oxford University) undergraduate medicine?

Please provide the number of waivers per year and on what grounds the UKCAT and BMAT was waived?"

5. The University responded on 26 September 2017. It categorised the complainant's request as vexatious under section 14(1) of the FOIA and refused to comply with it.
6. The University upheld this position following its internal review, dated 15 December 2017.

Scope of the case

7. The complainant contacted the Commissioner on 15 December 2017 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on the University's reliance on section 14(1) of the FOIA.

Reasons for decision

Section 14 – vexatious or repeat requests

9. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request under the FOIA if the request is vexatious.
10. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
11. 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.
12. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
13. In its submission to the Commissioner, the University has provided a background to the complainant's request, which it considers is relevant to its application of section 14(1) to the request. The University has explained that it has been engaged in frequent, almost constant, correspondence with the complainant since 2011. In the University's view, the driving force behind this correspondence has been the complainant's strongly felt sense of grievance about the rejection of his applications for admission to the Graduate Entry Course in Medicine (GE-Medicine) in 2003 and 2004. The main chains of correspondence during this period have often culminated in demands to be admitted to this course, as redress for the injustice that he believes he has suffered.

14. The University says that admissions to GE-Medicine are decided by colleges, but subject to guidelines and selection criteria determined by the University. Applicants are required to take a written test, which is an important factor in determining whether they are shortlisted. The complainant was interviewed in 2003 but did not perform well enough in the admissions test in 2004 to be shortlisted. The alleged unfairness of the admissions test, particularly for those with disabilities, has been a recurring theme in the complainant's correspondence with the University and the colleges that admit students to GE-Medicine.
15. The complainant's complaints about the outcome of his 2003 and 2004 applications were thoroughly investigated at the time, both internally and by persons independent of the University. His complaint against the rejection of his 2003 application was first investigated by the Course Director, who had not been involved in the decision on his application. It was then investigated by the Senior Proctor, and then on appeal by Professor Sir Bob Hepple QC of Cambridge University, acting as Deputy for the University's High Steward. As regards the complainant's 2004 application, there was a report by an 'Independent Person', appointed by the Vice-Chancellor in place of the Proctors, and a decision on appeal by a QC who was not an employee of the University and who was acting as Deputy for the High Steward. All the complainant's complaints were rejected.
16. According to the University, the complainant has made no further applications for GE-Medicine. However, he has made frequent requests to be granted an exemption from the admissions test as a 'reasonable adjustment' for an unspecified disability. It has been explained to him that any such request could only be considered as part of an application, and not granted in advance of an application. Despite this advice, the University says that the complainant has complained persistently and vociferously about the failure of the University and the 13 GE-Medicine colleges to grant him reasonable adjustments, and accused them of being in breach of their duties under the Equality Act. This in turn has led to threats of legal action. Many of his emails have headings such as 'Letter before Action', 'Submission of Legal Proceedings' or 'Notice of Impending Legal Action'. However, to date, no legal claim has been received in respect of these matters. It appears therefore that the complainant's frequent and persistent threats of legal action are designed to intimidate those in receipt of his emails.
17. The University considers that the complainant also feels aggrieved about the University's decision not to accept a late application made for a doctoral course in Clinical Psychology in December 2010. Applications have to be submitted on-line to the Clearing House for Postgraduate Courses in Clinical Psychology, based at the University of Leeds. The complainant missed the application deadline of 1 December 2010. The

complainant claims that due to a disability, he was unable to complete the on-line form and that the Clearing House failed to provide a paper alternative. By extension, he claims that the University has failed to make a reasonable adjustment to cater for his disability. The Clearing House website indicated that any applicant having difficulty with the on-line form should contact it for help. If it was agreed that a paper form would be the appropriate solution, such a form would be provided. The complainant's complaint about the Clinical Psychology course was investigated by the Director of Graduate Admissions in December 2010 and reviewed by the Registrar in February 2011. The complaint was not upheld.

18. The University says that a further grievance concerns the complainant's former D Phil supervisor. He has made a number of serious allegations against this supervisor but the University has no record of him submitting any complaints about the supervisor during his time as a student. It is now too late for him to make such a complaint. The complainant had successfully completed his doctorate in 2004. The supervisor in question left the University to join another institution in 2006.
19. In its submission, the University has gone on to discuss the correspondence it has had with the complainant and it has provided the Commissioner with a chronology of that correspondence, which she has reviewed. The University has explained that this chronology does not include every single email sent to or from the complainant but it does include most of the correspondence that has involved the University's Information Compliance Team or that is known to it. It includes around 80 FOI requests and subject access requests. The University has explained that it is difficult to be precise about the number of information requests as the complainant has tended to submit them to different parts of the University, and because, as he is entitled, he has not necessarily presented them as FOI requests or subject access requests.
20. The chronology also includes a great deal of correspondence outside of FOIA and the Data Protection Act (DPA). The University considers this to be relevant, because, regardless of whether the correspondence has been within or outside the FOIA/data protection, the motivation in most cases appears to have been the same: to vent his frustration and anger at the rejection of his applications for GE-Medicine and to obtain some sort of redress for the injustice that he feels he has suffered. The chronology also includes some of his correspondence with colleges, as his campaign has been directed at the wider collegiate University, and not just the University.

21. The University says it has complied with most of the complainant's requests and provided him with a very substantial volume of information, both under FOIA and the DPA. Where it has rejected a FOI request as vexatious, it says it has done so because the complainant has been using the FOIA to try to reopen his historic grievances against the University, which, as detailed above, have already been comprehensively addressed. The University has detailed the following about the complainant's requests:

- The complainant's requests have been frequent, repetitive and overlapping. The vast majority have concerned the GE-Medicine or Clinical Psychology courses, particularly the admissions process. Many have sought multiple items of information, in some cases, numbering 20 to 30 items. The University has referred the Commissioner to a specific example of this within the supporting evidence it has provided.
- As soon as one request has been answered, the complainant has nearly always followed up with a further request, which he has presented as being necessary to 'clarify' the information already provided. Again, the University has referred to an example in the supporting evidence.
- The complainant has targeted individuals, as well as the institution, and used language that has been aggressive and inappropriate. He has been quick to reject explanations out of hand, and to make serious and unsubstantiated accusations against employees, including those in relatively junior positions. The University has referred to examples of this.
- The complainant has been obsessive and intrusive in seeking out individuals who he thinks might possess information that will be of value to him. For example, in 2013, having disclosed a set of unredacted minutes dated 2010, he appears to have contacted every single person mentioned in those minutes, including those who had sent their apologies. Similarly, when the Course Administrator for GE-Medicine moved to a different job in 2015, he made extensive efforts, including calling the new Administrator, to find out whether she was still employed by the University and, if so, in what position. These actions made the former Course Administrator feel uncomfortable and harassed.
- As already indicated above, the complainant has also made frequent threats to take legal action against the University and/or against individual employees. Again, examples have been provided.

22. The University has told the Commissioner that dealing with the complainant's requests has imposed a disproportionate and heavy burden on the University's resources, both within the Information Compliance team and elsewhere. It says it is unable to quantify this burden because it does not keep such records. However, since 2011, the time spent by the Information Compliance Team responding to the complainant has certainly amounted to months, rather than weeks, and it does not believe that it would be an exaggeration to estimate that it totals around six months. This has diverted staff from dealing with other more legitimate requests or tasks. Members of staff have also borne a significant psychological burden, because of the strain imposed by the complainant's intransigence, unreasonable persistence and aggression; the repetitive, lengthy and often turgid nature of his emails; and, above all, because of the knowledge that however much information or assistance one provided, one was engaged in an essentially futile exercise, since whatever response was given would never be enough to satisfy him, and only lead to further correspondence. Despite this, the University says it has not automatically applied the section 14(1) exemption. It has complied (or partially complied) with some of his recent FOI requests and complied fully with all his subject access requests.
23. The University has observed that the complainant's request of 29 August 2017 is for the number of exemptions/waivers granted from the UK Clinical Aptitude Test (UKCAT) and the Biomedical Admissions Test (BMAT); the two admissions tests that have been used in the shortlisting of candidates for GE-Medicine and the standard Pre-clinical Medicine course. The admissions test, whether UKCAT or BMAT, has always been set, marked and administered by a third party independent of the University. The University changed from the UKCAT to the BMAT in 2012. These admissions tests have been the subject of previous FOI requests by the complainant, and the University has already provided him with the relevant minutes and correspondence related to the decision to cease using the UKCAT. As indicated above, in 2004, the complainant failed to perform sufficiently well in the UKCAT to be shortlisted; and has since submitted numerous complaints to the University and GE-Medicine colleges that the UKCAT and the BMAT are unfair to candidates with disabilities. The University considers that the request of 29 August 2017 is therefore clearly related to the complainant's historic grievances against the University in relation to GE-Medicine and a continuation of his long-standing campaign to punish the University for perceived injustices.
24. The University says that if it were to comply with the complainant's request, it is likely that the information provided would be used to open up a 'new front' in his dispute with the University. Based on his pattern of behaviour over the last seven years, it is likely that that the

complainant would submit further requests for 'clarification' or new information. For example, he could ask for the precise dates when exemptions granted, which individuals took the decision, whether or not they consulted others before doing so, the background of the individuals to whom the exemptions were granted, etc. It would also be likely to lead to further correspondence outside of FOIA.

25. The University is not aware of any wider public interest or value in the requested information that might outweigh the detrimental impact that complying with the request would have on it. In the University's view there does not appear to be any particular public controversy or outcry over medical schools using the UKCAT or BMAT as a shortlisting tool or over the granting of exemptions from either test. The University considers that the information has been requested to pursue a personal grudge, rather than further the public interest.
26. The Commissioner has found the University's submission to be compelling. The University's detailing of the background to the request, its chronology of its interactions with the complainant and its chronology of its FOI/ data protection – and other – correspondence with the complainant, have resulted in the Commissioner having no difficulty in finding that the complainant's request is vexatious under section 14(1) of the FOIA.
27. Quite clearly, the complainant has a long standing grievance against the University, which appears to have become an obsession, and which he is using the FOIA to pursue. At this point, the ongoing correspondence is serving no useful purpose and probably has not for a number of years. The Commissioner has taken account of the volume of correspondence, the unreasonable persistence and intransigence and the desire to re-open matters that have been investigated and closed. In addition, while it may or may not be purposeful, the Commissioner notes that the tone the complainant tends to adopt and his wider correspondence and behaviours, have made members of University staff feel psychologically pressured and, on occasion, intimidated, uncomfortable and harassed. The FOIA was not designed to have that effect on public servants or to cause the degree of unjustified burden that, cumulatively, the complainant's long correspondence has caused to the University. The University is absolutely correct to now draw a line and to refuse to comply with the complainant's current request.

Right of appeal

28. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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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