

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2019

Public Authority: University of the Arts London

Address: 272 High Holborn
London
WC1V 7EY

Decision (including any steps ordered)

1. The complainant has requested information relating to allegations of sexual harassment.
2. The Commissioner's decision is that University of the Arts London (UAL) is entitled to rely on section 12 in response to the request. UAL also fulfilled its obligations under section 16 of the FOIA by advising the complainant in its response of 24 May 2018 that it was unlikely it would be able to respond to a refined request within the cost limit.
3. However, the Commissioner also finds that UAL has breached section 10 of the FOIA by failing to provide the information within the statutory time scale.
4. The Commissioner does not require UAL to take any steps.

Background

5. UAL provided the following information as background to the case and included copies of relevant correspondence.

"UAL received a number of requests pursuant to the FOIA from the complainant and these are summarised below. Unfortunately, the requests were not consistently dealt with by UAL. However, UAL did subsequently seek to address the issues by responding to three of the Requests in full by letter dated 24 May 2018."

Request and response

6. On 29 December 2016, the complainant sought details of allegations of sexual harassment and sexual assault (and other forms of gender violence and sexual violence) made against UAL staff between 2011 and 2017 and in particular whether any such allegations had resulted in a financial settlement by UAL under a non-disclosure agreement (NDA) ("request 1");
7. On 30 March 2017, the complainant sought details of allegations of sexual harassment and sexual assault (and other forms of gender violence and sexual violence) made against UAL staff between 2007 and 2011 and in particular whether any such allegations had resulted in a financial settlement by UAL under a non-disclosure agreement (NDA) ("request 2");
8. On 11 October 2017, the complainant sought details relating to sexual harassment during the period 2011 to 2017, requesting information relating to UAL's training, Code of Conduct, support and advice and other related information ("request 3").
9. On 8 January 2018, the complainant sought details relating to sexual misconduct committed or allegedly committed by UAL staff, former UAL staff and academics in non-stipendiary roles between 2011 and up to 3 January 2018 ("request 4").
10. Following an internal review, UAL issued revised responses to requests 1, 2 and 3 on 24 May 2018. A response had been issued to request 4 on 5 February 2018. UAL acknowledged that it omitted to conduct an internal review of that request but contended that, save for as set out below, the response would replicate the rationale as set out in the requests to 1, 2 and 3.

Scope of the case

11. The complainant contacted the Commissioner on 1 May 2018 to complain about the way his request for information had been handled.

He stated:

"1. UAL has repeatedly failed to provide information requested under the FOIA within the act's legal time frame. I have yet to receive a substantive response to my latest FOI request of January 2018.

- 2. UAL has failed to conduct an internal review within the time frame stipulated in the FOIA.*
- 3. UAL has admitted to providing me with inaccurate information in response to earlier FOI request in 2016-2017. Its record keeping appears to be shambolic.*
- 4. UAL has stated that is has not used non-disclosure agreements in settlements for sexual harassment complaints. Yet a whistleblower has told me that one exists, which should have been revealed in response to my first FOI request."*
12. When submitting its response to the Commissioner UAL explained that it was now in a position to provide a further response to the complainant with regard to requests 1, 3 and 4. However, it wished to maintain reliance on section 12 with regard to the remaining withheld information.
13. UAL provided the additional response to the complainant on 9 January 2019 and a copy to the Commissioner. The complainant wrote to the Commissioner the same day, again expressing his dissatisfaction with the additional response, stating:
- "Please note I am not satisfied with this response. Among other things, I see nothing here that addresses the NDA issue."*
14. The Commissioner wrote to the complainant on 10 January 2019 to ask him to clarify his other outstanding concerns. He replied, also on the 10 January 2019:
- "Section 12 is at the heart of this. If you recall, I sent links to webpages on UAL's website where they described the work they were doing to improve the reporting of sexual misconduct.*
- This is clearly at odd with the position UAL has adopted to my complaint - that their systems are too disorganised/chaotic to supply data that every other university has provided to me. The university cannot on the one hand claim to be complying with Universities UK's guidance on improving the recording & handling of sexual misconduct and on the other hand claim to be too inept to properly answer my FOI requests. They need to fully account for this discrepancy. Please don't forget that UAL initially did provide figures to me before eventually claiming this data was unreliable.*
- The argument UAL has put forward in this dispute expects us to believe that their data recording/handling has got worse since I made my first request in 2016, not better as they are publicly claiming on their website."*

15. The Commissioner considers the scope of this case to be to determine if UAL is entitled to rely on section 12 with regard to the remaining withheld information. She will also consider the general handling of the request.

Reasons for decision

Section 12 – cost of compliance

16. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as UAL.
18. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for UAL.
19. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
20. UAL explained that since the requests, changes had been made that affected its ability to respond to the requests. Further details are provided under 'Other matters' at the end of this decision notice. The Commissioner is considering the applicability of section 12 since the new systems were implemented.

Student files

21. UAL advised the complainant that there were approximately 300 student complaint files to review. However, these complaints could pertain to any issue and not just complaints relating to the request. All of these

files would need to be reviewed to ascertain whether they contained information that fell within the scope of the request.

22. In its submission to the Commissioner UAL further explained that student complaint files are stored electronically; of which around 300 are within scope. In an effort to provide more clarity, it conducted "keyword" searches. UAL advised it had not carried out this search previously due to its serious concern that this would be an inaccurate search methodology; it would rely on the files containing a specific identified keyword and would not capture all of the relevant information. It has now carried out this search and still does have serious concerns about the search methodology.
23. UAL described its searches stating it had conducted a keyword search of the term 'sexual' within the entirety of the student complaints folders in order to identify where terms such as 'sexual harassment' or 'sexual misconduct' were used in the text of the complaint. This search identified two complaints by students which related to an allegation of 'sexual harassment'.
24. In relation to the student complaint files, save for the additional information UAL provided, it would not be possible to search the records any further, within the appropriate time limits. It explained that the search of its electronic records returned 2877 documents. Having carried out a 'dip' sample it showed academic appeals, policies and other matters. To review all of the 2877 documents relating to "misconduct", allowing 2 minutes per document to review, would be considerably beyond the appropriate limit.
25. Notwithstanding the potential limitation to the keyword searching, UAL have now conducted a keyword search across all student complaint files within scope so far as it is able¹. Beyond the information now identified, UAL stated it cannot further confirm or deny whether any other information is held due to the cost limit (section 12).
26. No other relevant complaints were identified by this search, or by searches of other keywords, taken from requester's requests. UAL maintain that the exemption under section 12 of FOIA still applies as it cannot be confident this search represents all the relevant recorded information it holds. It remains the case that it would need to read through all the complaint files to determine how many complaints relate

¹Keyword searches were conducted across the full contents of the student complaints folders for each college. The full data set goes back to June 2012 before which only partial records are available due to records retention policies

to incidents which would be interpreted as sexual harassment etc. but where the complaint does not describe it in such terms.

Staff files

27. In its response of 24 May 2018, UAL explained to the complainant that it estimated there are 6000 staff files to review, which includes current and past staff, and each file would take approximately 45 minutes to review.
28. In order to establish whether any allegations had been recorded, each of its six colleges would have to review all its staff files. It explained that although it does have an electronic database of this information, it is not categorised in terms that allow information relating to the request to be extracted digitally, and therefore each file would need to be reviewed manually.
29. Prior to February 2017 the staff documents were not all kept in an electronic format and were held in manual files.
30. UAL explained that it reviewed the questions in Request 4 in light of the register that was created from November 2017 for complaints made to it concerning allegations of sexual harassment and similar behaviour. When the register was established, all active cases that were open/current in November 17 were used to populate the register regardless of when they were reported, so this should not be interpreted as representing the number of complaints made between November 2017 and January 2018.
31. It confirmed that there were four active staff cases (i.e. cases being investigated) recorded on the register between November 2017 and 3 January 2018 (the date specified by the requester).
32. There were two reported cases from students about students falling within the scope of Request 4; both were formally investigated.
33. With regard to the four activities outlined above UAL stated:
34. The information contained within staff records is not held in a readily searchable format. In order to establish whether any NDAs or confidentiality clauses have been used, a member of UAL staff would need to review every staff file to ascertain whether it contains information within the scope of the Requests. Until February 2017, staff records had been held in hard copy only; this would mean that paper files would have had to be reviewed to confirm if the information within scope was "held". From February 2017, it has adopted a process whereby staff records are held electronically but in scanned pdf format, which means they are not readily searchable.

35. UAL further stated that it is mindful of paragraph 1.3 of the Code of Practice which states, "*public authorities are not required to create new information in order to comply with a request for information under the Act. They only need to consider information already in existence at the time a request is received.*"
36. For records held up to February 2017, UAL estimated that there are 6000 staff manual files potentially within scope (to cover UAL staff and former staff).
37. UAL estimated that each staff file would take around 45 minutes to review to determine whether or not the information is held. Using the flat rate of £25 per hour for staff time set out in the Regulations, it estimates that the cost is likely to be £112,500.
38. In relation to the student related questions within the requests, UAL undertook a sampling exercise; it became apparent that physically examining 300 student complaint files (at 10 minutes to review each file) would exceed the appropriate limit as set out in Section 12 of FOIA. As a result of this, UAL applied the exemption.
39. UAL explained that the staff documents were not all kept in an electronic format prior to February 2017, but rather were manual files and were held in six separate locations in London.
40. UAL estimate there are 6000 staff manual files and each file would take around 45 minutes to review to determine whether or not it contains information within scope of the request.
41. In relation to the student complaint files, save for the additional information it has now provided, it would not be possible to search the records any further, within the appropriate time limits. Of the 2877 documents relating to "misconduct", allowing 2 minutes per document to review, would again be considerably beyond the appropriate limit.
42. Again UAL explained, that as indicated above, it estimated that it would take approximately 45 minutes to search each staff file and two minutes to review each document of the student documents to retrieve any information falling within the scope of the request.
43. In relation to the student related questions within the requests, UAL undertook a sampling exercise; it stated that it became apparent that physically examining 300 student complaint files (at 10 minutes to review each file) would exceed the appropriate limit as set out in section 12 of FOIA. As a result of this, UAL applied the exemption.
44. With regard the NDA element of requests 1 and 2, UAL has indicated that its searches have provided a nil return. This is not to say however,

that such information does not exist, rather that UAL was unable to identify it when carrying out its searches. In order to determine if there was such a case would require a manual review of 6000 staff files, 2877 documents identified under the search of 'misconduct' to locate, retrieve and extract any relevant information. Clearly this would take in excess of 18 hours, and in conjunction with activities identified above, would do so substantially.

45. The Commissioner has considered the arguments put forward by UAL and has taken into account the amount of information which would need to be reviewed manually in order to determine what recorded information is held relevant to the request.
46. The Commissioner is satisfied that UAL has provided a cogent explanation for why compliance with the requests would exceed the appropriate cost limit. Even if UAL has over-estimated the time it would take to determine the information is held and it only took five minutes per file, it would still take in excess of 18 hours and consequently cost more than the appropriate limit.
47. The Commissioner is therefore satisfied that UAL was entitled to rely on section 12.

Section 10 – time for compliance

48. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
49. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.
50. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. From the information provided to the Commissioner it is evident that the public authority did not provide the complainant with the information within the statutory timeframe in respect of this request.
51. Consequently, the Commissioner finds UAL has breached section 10 of the FOIA.

Section 16 – Advice and assistance

52. Section 16 of FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

53. Paragraph 14 of the section 45 Code of Practice states:

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the 'appropriate limit' (i.e. the cost threshold) the authority should consider provide an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."

54. UAL acknowledge that section 16 of the FOIA places a duty on a public authority to provide advice and assistance. It stated that it responded to three of the Requests by way of letter dated 24 May 2018.

55. The Commissioner notes that UAL's response states it had considered if it would be able to respond to a refined request which limited the timescale, within the cost limit. However, it did not consider it could do so without exceeding the cost limit, even for a single year.

Other matters

56. Due to the other concerns raised by the complainant, the Commissioner sought further information about UAL's systems and procedures. In its submission to the Commissioner it explained that since the requests were made, there have been two changes within UAL, which affect its ability to respond to the requests:

- from February 2017, staff personnel records have been stored electronically; and

- in November 2017, UAL created a register for complaints made to the University concerning allegations of sexual harassment and similar behaviour, which is being maintained separate to staff or student complaint files.
57. In addition UAL provided the Commissioner with a copy of its record keeping policy.
58. It further confirmed that it has now strengthened its procedure. Historically, FOIA response procedures were handled individually by its six colleges, however now, requests are passed through the Local Information Manager network, who have knowledge and training in handling FOIA requests and all requests are reviewed by the governance team, which includes a FOI and Data Protection administrator, Data Protection Officer, Records Manager and where necessary referral to the Legal Department for advice. It also provided the Commissioner with a copy of its process flowchart.

Accuracy of the information provided

59. The complainant was also unhappy that UAL advised him that the information previously provided was inaccurate.
60. UAL explained to the Commissioner that on three occasions, it provided inaccurate information pertaining to staff related questions following receipt of the requests. This was because the individual involved in the relevant UAL department recalled from memory, in a number of other specific cases from different requests he had been involved in, where issues relevant to the requests had arisen. The staff member therefore provided only this information, again from memory, in response to the request, without an attempt to locate and extract all of the information falling within the scope of the request.
61. It further explained that this information is likely to be inaccurate because on review UAL were not able to locate the cases that had been referenced in its original responses to the requests; consequently it carried out internal reviews of requests 1, 2 and 3.
62. UAL also specifically addressed the issue with the accuracy of its initial responses to requests 1 and 2. UAL had not maintained a formal or central register or other record of reports of sexual assault, harassment or misconduct and as such, to verify whether any complaint of that nature had been made, it would have been necessary to review the individual files of the staff member/student complaint concerned. When the requests were made, the staff related questions within the requests were addressed by personnel within UAL who depended on their recollection of cases.

63. Therefore, the responses were provided on the basis of personal memory and not from any actual or verifiable record.
64. UAL acknowledged that this approach was not an appropriate one and have since issued updated guidance to staff so that responses to FOI requests are only based on records it actually holds.
65. There is no provision within the FOIA for the Commissioner to take into consideration the veracity of any information provided in response to a request. Her responsibility lies in assessing whether a public authority has provided information it held at the time of the request, subject to any exemptions, that it has correctly applied any exemptions cited, and that it has done so within the relevant timescale.
66. In addition, the Commissioner provides advice and guidance on the legislation she oversees in order to achieve compliance on that legislation.
67. The Commissioner further notes the complainant's concern that:

"The argument UAL has put forward in this dispute expects us to believe that their data recording/handling has got worse since I made my first request in 2016, not better as they are publicly claiming on their website."
68. As explained above, UAL introduced an electronic records system in 2017 and has transferred information previously held manually on to that system. In addition, it has explained that the information previously provided had been done so from memory – technically, this is not 'held' information for the purposes of FOIA.
69. The Commissioner therefore rejects the complainant's argument and based on the additional information provided, she is satisfied that UAL has taken steps to improve the procedures and systems in place to assist it when responding to FOI requests. No further action is required.

Right of appeal

70. 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

71. 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.
72. 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

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