



Appeal number: EA/2019/0270

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

CHRISTOPHER BRINDLE

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE CLARE GOODMAN
Mr PIETER DE WAAL
Mr MIKE JONES**

Determined on the papers, the Tribunal sitting in Chambers on 21 January 2020

© CROWN COPYRIGHT 2020

DECISION

1. The appeal is dismissed.

REASONS

Background to Appeal

2. The Appellant made an information request to University College London (“UCL”) on 13 September 2018.
3. UCL refused the request in reliance on s. 14(1) of the Freedom of Information Act 2000 (“FOIA”).
4. The Information Commissioner issued Decision Notice FS50806787 on 2 July 2019, upholding UCL’s decision.
5. The background to the request can be summarised as follows. The Appellant worked for UCL as a scientific programmer and research associate from 2000 until 2010 when he was made redundant. The astrophysics research paper on which the Appellant had been working was completed and published in 2012. In March 2013, the Appellant made a complaint to the Science & Technology Facilities Council (STFC) about bad project management and research misconduct on the UCL project. The STFC responded that their oversight processes did not highlight any concerns. The STFC directed the Appellant to the UCL Scientific Misconduct/Complaints procedures.
6. In October 2016, UCL released to the Appellant a computer program developed by the Principal Investigator on the 2012 paper in the process of completing the paper. The program was released in response to an information request from the Appellant and after the involvement of the Commissioner.
7. From 26 January 2018 to 13 September 2018, the Appellant made a series of requests for more information relating to the 2012 research paper and the computer program. In particular, on 11 July 2018, the Appellant asked for copies of algorithms and explanations about testing relating to the paper and the identification of co-authors. UCL responded on 13 August 2018, providing the algorithm and stating that information was not held in relation to other questions. On 13 September 2018, the Appellant asked several follow up questions which he agreed should be treated as a new request for information. The full text of his request is at page 49 of the bundle.
8. On 18 October 2018, UCL refused to respond to the request of 13 September 2018 on the basis that it was vexatious under section 14(1) of FOIA. An internal review upheld that decision on 19 November 2018. The Appellant complained to the Commissioner. The Commissioner concluded in the Decision Notice of 2 July 2019 that there was evidence of frequent and/or overlapping requests and unreasonable and persistent behaviour. The Appellant’s requests were part of an ongoing grievance and made unacceptable accusations against UCL staff. The Appellant had been told how to make a formal misconduct complaint but had “*chosen not to do this*”. A disproportionate amount of resources was required to satisfy the requests.

Appeal to the Tribunal

9. The Appellant's Notice of Appeal relied on the following grounds: (i) that UCL had exaggerated the number of requests for information; (ii) the requests were not overlapping; (iii) UCL had a personal grudge against the Appellant; (iv) UCL had failed to fix errors in the catalogue and computer program related to the 2012 paper; and (v) UCL had never suggested that he use their complaints procedure. The Appellant said that his purpose in making the request was to "*ensure that everything in the 2012 paper was correct*".

10. The Commissioner's Response dated 4 September 2019 resisted the appeal, maintaining the analysis set out in the Decision Notice. The Commissioner submitted that the Appellant's continued dialogue with UCL about the 2012 paper "*is of no value to the wider public and only serves to service the Appellant's personal and long standing grievance in this matter*". Grievances about research misconduct should be dealt with through UCL's complaints procedure and not under FOIA. The Commissioner submitted that an excessive burden was being placed on UCL and on particular staff members, that the Appellant was demonstrating unreasonably persistent behaviour and that responding to his request was likely to generate further detailed correspondence.

11. The Appellant responded in an email to the Tribunal dated 13 October 2019, stating that (i) it was the STFC which had directed him to UCL's complaint procedures in 2013, not UCL, and (ii) UCL's claim to have spent 48 hours dealing with his requests was exaggerated.

12. Both parties asked the Tribunal to determine the appeal without a hearing. The Tribunal was satisfied that it could properly determine the issues without a hearing and that it was fair and in the interests of justice to do so.

13. The Tribunal considered an open bundle of evidence comprising over 160 pages.

The Law

14. S. 14 FOIA provides as follows:

14. Vexatious or repeated requests

(1) Section 1 (1) does not oblige a public authority to comply with a request for information if the request is vexatious.

15. In *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC), the Upper Tribunal interpreted "vexatious requests" as being manifestly unjustified, or involving inappropriate or improper use of a formal procedure. The Upper Tribunal considered four broad criteria for assessing whether a request was vexatious, namely (i) the burden imposed by the request on the public authority and its staff; (ii) the motive of the requester; (iii) the value or serious purpose of the request and (iv) whether there is harassment of or distress to the public authority's staff. The Upper Tribunal stressed the importance of taking a holistic approach. The Upper Tribunal's approach was broadly endorsed by the Court of Appeal in its decision (reported at [2015] EWCA Civ 454), emphasising the need for a decision maker to consider "*all the relevant circumstances*". Arden LJ noted that by using the word "vexatious",

“Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one and that is consistent with the constitutional nature of the right”.

16. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

“If on an appeal under section 57 the Tribunal considers -

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

17. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law, or involved an inappropriate exercise of discretion rests, with the Appellant.

Conclusion

18. The Tribunal concludes that the Appellant’s request for information is an attempt to use FOIA to pursue a longstanding personal grudge and grievance against UCL and to obtain explanations for and corrections to the 2012 research paper, instead of the legitimate route of UCL’s complaint process and/or employment law. This is an inappropriate use of the FOIA regime. The Appellant said in his submission to the Tribunal that *“it would be difficult to deny I don’t have a grudge against some of these people”* (page 18). It is irrelevant whether it was the STFC or UCL which directed the Appellant to UCL’s complaint procedures in 2013; the Appellant was aware of the procedures and chose not to use them.

19. The Appellant’s requests for information placed a considerable burden on UCL. He submitted at least four requests for information in 2018. The requests were complex and technical, and on occasion, repetitive and overlapping. On 22 February and 14 March, he asked follow up questions immediately after receiving a response. On 12 March 2018, he made a new request before his request of 22 February had been answered. The Tribunal finds credible UCL’s estimate that its staff spent 48 hours responding to the Appellant’s requests in 2018.

20. It is also clear from the course of dealing between the Appellant and UCL that the Appellant is unlikely to be satisfied with responses provided under FOIA. For example, the Appellant’s request of 13 September 2018 asks UCL to look again at its response to each of his three questions of 11 July 2018. The Tribunal recognises that the Appellant’s approach may have been fuelled by the fact that in 2016, UCL disclosed

information – the computer program – only after the Appellant took his request to the Commissioner.

21. The Tribunal accepts that the course of dealing between UCL and the Appellant means that his requests for information are likely to be distressing for individual UCL staff, in particular the Principal Investigator. The Appellant has in the past made allegations about research misconduct against several individuals, including the Principal Investigator, in emails copied to multiple recipients (pages 147 and 153). There is insufficient evidence that these allegations are justified; the STFC did not have any concerns in 2013 about the conduct of the project.

22. The Tribunal recognises that there is a public interest in the dissemination of academic research and the use of public funds for research. The Appellant submits that the 2012 paper would be of “*great interest to scientists as it contains a huge amount of optical and ultraviolet data not available elsewhere*” (page 17). He says that he is working on new research analysing the data in the catalogue which he intends to publish in a few years’ time.

23. However, the paper is now several years old. Weighing the value of the request against the impact on UCL and its staff, taking into account the Appellant’s motivation and the other legitimate routes available to him to complain about research misconduct, the Tribunal is satisfied that the request is an inappropriate use of the FOIA regime which places a disproportionate burden on UCL and its staff.

24. Applying the guidance from the Upper Tribunal and the Court of Appeal referred to in paragraph 15, the Tribunal therefore concludes that the request is vexatious under Section 14(1) of FOIA.

25. For all these reasons, we now dismiss the appeal and uphold the Decision Notice.

(Signed)

**C. L. GOODMAN
DISTRICT TRIBUNAL JUDGE**

**DATE: 5 February 2020
Promulgation date: 17 February 2020**