

D. Colquhoun FRS
Professor of Pharmacology, UCL
Department of Pharmacology
University College London
Gower Street
London WC1E 6BT
email: d.colquhoun@ucl.ac.uk

(This submission is made in a personal capacity, not on behalf of UCL.)

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
KY16 9DS
Telephone: 01334 464611
Email: enquiries@itspublicknowledge.info

17 October 2009

Appeal to the Scottish Information Commissioner concerning request to Robert Gordon University

Dear Sir or Madam

I wish to appeal to the Commissioner about the refusal of Robert Gordon University to provide the material that I requested.

Summary of the request

I have attached the relevant correspondence. My first request (24 July 2009) asked merely what materials were available

(1) The relevant emails, collected into a single pdf file, (emails-for RGU-FoI-request.pdf)

(2) The file sent by RGU on 11 August 2009 with their initial response

(FOI 230709 1 Homeopathy course materials.pdf)

(3) At this point I asked for a very small sample of the teaching materials that are used on the course (11 August 2009)

“I should like to see only the following three powerpoint presentations in the first instance, please.

Please can you let me know also who produced the powerpoints.

- (1) Evidence for homeopathy
- (2) First aid remedies
- (3) Allergies”

(4) First refusal to send the requested material (8 September 2009). The main reason given was

“The University is exempting the three PowerPoint Presentations under section 33 part (1) (b) “Commercial Interests and the Economy” of the Scottish Freedom of Information Act, as the “disclosure under this Act, [of the Presentations], will be likely to prejudice substantially the commercial interests of the University [the ‘Scottish public authority]”

(5) I asked for an internal review of this decision. The refusal of the internal review to supply what I asked for is in the email file and in the attached file

Request for Review FOI 110809-1 Homeopathy PowerPoint Presentations ajm.doc

Basis of my appeal to the Scottish Information commissioner

(1) The University has chosen to depend largely on the commercial exemption. In their first response they said

“The University is exempting the three PowerPoint Presentations under section 33 part (1) (b) “Commercial Interests and the Economy” of the Scottish Freedom of Information Act, as the “disclosure under this Act, [of the Presentations], will be likely to prejudice substantially the commercial interests of the University [the ‘Scottish public authority]”

This was repeated in the internal review report/

“I have reviewed the University’s response in some detail, and my conclusion is that I wish to uphold the original response of the University to your request – in other words that the information you requested is being withheld under section 33 part (1) (b) of ‘the Act’, “Commercial Interests and the Economy”.

I am aware of the UK Information Commissioner's decision that universities cannot be classified as commercial under the Freedom of Information Act 2000. However, given that his ruling refers to the Freedom of Information Act 2000 the University is content if necessary to await the decision of the Office of the Scottish Information Commissioner under the Freedom of Information Scotland Act 2002 (FOISA 2002) in this respect, and respond to that as appropriate."

You will be aware that the Information Commissioner's Office (for England and Wales) recently gave this question very careful legal scrutiny and in its report it concluded that "finds that the exemptions at sections 21, 43(2), and 36(2)(c) are not engaged."

(Report is at

http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50140374.pdf)

I am asking now whether the Scottish Information Commissioner wishes to disagree with this interpretation. If you uphold it, most of the case presented by Robert Gordon University becomes invalid.

(2) I would point out that I have never asked for a whole course. I asked only for three specified powerpoint presentations (and if I feel the need to ask for more, it will be a very small number more). Three presentations in isolation have no commercial sale value so I maintain that the commercial argument is irrelevant anyway.

(3) In the response from the internal review, RGU makes great play of the fact that their income does not come entirely from the taxpayer and student fees. I suspect that this is not relevant to the Freedom of Information Act. In any case, they do not specify the extent to which the course from which I have requested material is paid from the public purse. I have requested this information from RGU and expect to ask their witnesses about it. They also say

"we have invested heavily in the development of course material"

I have also asked RGU how much they invested in the production of the powerpoints which I requested (since the subject matter has remain substantially unchanged for the last 150 years, I do not believe it can have cost much).

(4) In the response to from the internal review, RGU say

"it is mainly the quality of our courses (including course material) and teaching which has given us the position of 'the best modern university in Scotland'

I am bound to ask, if the university is so proud of its course material, why is it expending so much time and money to prevent anyone from seeing a small sample of it.

(5) In the initial refusal (see collected emails) the matters of public interest, and of copyright, were raised as reasons for refusal. Since neither of these is mentioned in the response to the internal review, perhaps RGU has dropped them as reasons for their refusal. It is my understanding that copyright is irrelevant to the Freedom of Information Act (though I would have course have to have regard to copyright law if I wished to make any of the material public)

The matter of public interest seems to be an irrelevant defence too. If the taxpayer pays (largely) for a university then clearly the taxpaying public have an interest in knowing how their money is spent.

(6) I appreciate that the question of my motives in asking for material are irrelevant to the operation of the Freedom of Information Act. However I believe they are not entirely irrelevant to the defence offered by RGU. The response is written as though I had requested a whole course (not true) and as though I wished to sell the course for commercial gain (not true). The fact of the matter is that RGU is perfectly well aware that I may wish to use the public interest and fair quotation provisions of copyright law to reveal selected bits of the teaching material, and that the revelation that taxpayers' money is being spent on pseudo-scientific teaching will prove embarrassing to the university. Avoidance of embarrassment is, I believe, the real motive for RGU's denial, but it is not an allowable defence under the Act.

Signed



D. Colquhoun FRS
Professor of Pharmacology, UCL
Department of Pharmacology
University College London
Gower Street
London WC1E 6BT
email: d.colquhoun@ucl.ac.uk