



Case Reference: FT/EA/2024/0179
Neutral citation number: [2024] UKFTT 919 (GRC)

First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Heard: By Cloud Video Platform
Heard on: 2 October 2024
Decision given on: 28 October 2024

Before

JUDGE SOPHIE BUCKLEY
MEMBER SUZANNE COSGRAVE
MEMBER MIRIAM SCOTT

Between

ALISTAIR ALLISON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: In person

For the Respondent: Did not appear

Decision: The appeal is allowed

Substitute decision notice: IC-268493-Z5C8

Organisation: The Governing Body of the Castle Church of England Federation

Complainant: Mr. Alistair Allison

1. The requests for information made by the complainant on 14, 26 and 27 September 2023 were not vexatious. The public authority was not entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA) to refuse to comply with the requests.
2. The tribunal requires the public authority to take the following step:

Issue to the complainant a fresh response to the requests which does not rely on section 14(1) FOIA.
3. The public authority must take this step within 35 calendar days of the date of this decision.
4. Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-268493-Z5C8 of 19 April 2024 which held that the Governing Body of the Castle Church of England Federation was entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA).
2. The request was made to the Thomas Coram School. Under FOIA relevant public authority is the Governing Body of the Castle Church of England Federation, but in this decision the public authority is referred to as 'the school'.

Background to the appeal

3. This appeal arises out of a visit by Mr. Allison to the school on 11 July 2023. There are differing versions of what happened on this visit, but it is not necessary for the tribunal to resolve those differences. Mr. Allison's version is that arriving to pick someone up from an after-school class, he was able to gain access to the building without any security checks because the door was open and reception unattended. He then asserts that he was spoken to sharply and unprofessionally by the assistant headteacher who stated that he should have signed in at reception.
4. Following this visit, there was a short email exchange between Mr. Allison and the school in which he asked for and was given confirmation that it was the assistant headteacher he had spoken to.
5. On 6 September 2023 Mr. Allison emailed the school again as follows:

“Good morning,

Having reviewed both your publication scheme, and the ICO's publication expectations for state-funded schools, I request the following information:

- Names, positions and salaries of all staff and time in role
- Names positions and salaries of all staff who have specific safeguarding roles and time in role
- Procedures/protocols for access to the school by individuals not on the school staff that were in place 11th June 2023
- Procedures/protocols for access to the school by individuals not on the school staff that were put in place after 11th June”

6. As Mr. Allison acknowledged in the hearing, he made an error in referring to the 11 June. The incident in question took place on 11 July. This error is repeated in other requests and in a number of documents submitted by the appellant in this appeal.
7. The head of school, Lucy Hill, replied on 6 September stating that a hard copy would be organised for the information ‘for the information we are able to share’ and they would let him know when it was ready.
8. On 11 September Mr. Allison replied, giving a preference for the information to be emailed but Ms Hill replied on the same day to say that it had to be a hard copy ‘as stated in the policy’. Mr. Allison engaged with the ICO and later on 11 September sent a copy of the ICO’s reply to the school, which stated that the school should send the information by whatever means is most reasonable and that if the information was requested electronically, it would be most reasonable to reply by email and attach the information. Ms Hill replied on 11 September saying that she would need to check with the Data Protection Officer (DPO) whether they could deviate from their policy because the policy states hard copies.
9. On 12 September Ms Hill emailed Mr. Allison to say that she had spoken to the DPO. The email continued:

“Our DPO has said, as the information has already been collated and your original request did not include email format, we are not obliged to change the method of information. In future, we could provide the information in a different format if requested from the start. He also said to inform you that you are welcome to complain to the ICO, however, we can make them aware of the original request (which did not include email format and you were informed it would be a hard copy in our initial response) and it is not reasonable to ask us to do it twice.

He did comment that if it does not cause too much extra work for staff, we could use a scanner machine to provide you with the documents. As there

are not too many documents to give you and it is not too onerous to staff, on this occasion, we will scan the documents across to you, which we will do so by the end of the week.”

10. On 13 September Mr. Allison emailed the school as follows:

“Good morning,

Appreciate you taking the time to engage with your DPO.

I wonder, are they TC specific, or do they cover off such matters for the Castle Church of England Federation, so for Victoria too?

Appreciate your offer to scan and email the information, so look forward to receiving this in due course”

11. There followed a short email exchange in which Ms Hill confirmed that the DPO was an external provider who worked across the federation and advised Victoria (another school) too.
12. On 14 September Mr. Allison emailed the school pointing out that the hardcopies were printed from digital ones and so it would be confusing if it were more efficient to scan and re-digitise them to email across. Mr. Allison had also looked at the Castle Federation’s Publication Scheme and in that email pointed out to the school that the policy said that the scheme committed the authority, where reasonably practicable, to publishing any requested dataset in an electronic form that was capable of re-use. Mr. Allison asked for an explanation of why it was not reasonably practicable to provide the information in an electronic format and why Ms Hill’s statement that it had to be ‘a hard copy as stated in the policy’ contradicted that commitment.
13. There followed a short exchange of emails between Mr. Allison and Ms Hill on 14 September in which Ms Hill reiterated that they had acted on advice from the DPO and Mr. Allison pointed out that the DPO appeared to be giving advice that was contrary to the school’s policy and the ICO’s expectations based on the legislation.
14. Later on 14 September Mr. Allison made the first FOI request that is the subject of this appeal. It was a multi-part request asking for the number of FOI requests that had been made while the current publication scheme was in operation, how many of those had specifically requested that the information be provided electronically, and how many were responded to electronically or in hard copy. Mr. Allison also requested a copy of any previous publications schemes or equivalent FOI policies.
15. On 15 September the school responded to the request of 6 September and provided most of the information but withheld the time in role under section 40.

16. On 26 September Mr. Allison raised with the school that they had not responded in full to his request of 6 September 2023 because they had not provided information on staff time in role or salary data of senior staff.
17. On 26 September Mr. Allison also made the second FOI request that is the subject of this appeal. This was another multi-part request that asked for the school's procedures/protocols on allowing collection of pupils from after school activities (at and after 11 June 2023), its procedures/protocols to allow visitors to access school reception during and after the school day, details of the physical measures used to control access to the school reception during and after the school day, any changes made to those measures after 11 June 2023 and any procedures/protocols/rules governing those measures in place on 11 June 2023.
18. On 27 September Mr. Allison made the third FOI request that is the subject of this appeal in which he requested details of the external provider who the school used for data protection advice and the amount spent on this service.
19. The school responded to the requests of 14, 26 and 27 September on 9 October 2023, refusing them as vexatious.

Factual background after the response to the requests

20. The following is only relevant and taken into account by the tribunal to the extent that it sheds light on the position at the time of the response to the requests.
21. Mr. Allison made a formal complaint to the school on 13 November 2023 which was decided in March 2024. The outcome of that complaint partially upheld the complaint that the school did not deal with the FOI requests correctly, stating, 'It was felt that although your requests were extensive, the school determined quite early that it would not provide any further information to you.'
22. Mr. Allison wrote to the school twice in March 2024 and received the following response on 19 March 2024 from Ms Hill:

"In your letter dated 13th March, you highlighted the side gate and an incident from last year. The side gate has been discussed during a governing board meeting and I have met with our site manager and Executive Head to discuss your concerns, this matter has been resolved and the gate is in full working order.

In relation to the email to Clerk of governors regarding the complaints policy not being followed, given the multiple communications with school staff and governors we did not feel that your complaint could be resolved at stage one and therefore the decision was made to proceed to stage two and form a stage complaints panel. If you had informed us that you were unable to make the date of the panel, we would have rearranged the panel.

At the stage two panel I did make an apology to yourself regarding your communications being due to a personal grudge and being vexatious. I would like to take the opportunity to reiterate that apology, this was only ever discussed with my head of human resources.

Moving forward we will not be responding to historic incidents and previous communications. These have been dealt with via the complaints panel process and the ICO. Furthermore, the school does not have the resources to keep responding to these communications.”

23. The school estimates that by March 2024 staff had spent over 100 hours discussing preparing and writing information for Mr. Allison.

Request, Decision Notice, and appeal

The requests and the response

24. The request on 14 September 2023 was for:
- The total number of FOI requests made since 1st November 2018, or the specific date in November 2018, when your current Publication Scheme: Freedom of Information Act was issued
 - The number of FOI requests made since 1st November 2018, or the specific date in November 2018, when your current Publication Scheme: Freedom of Information Act was issued, that specifically requested that the information was provided electronically
 - The number of FOI requests made since 1st November 2018, or the specific date in November 2018, when your current Publication Scheme: Freedom of Information Act was issued, that were responded to electronically
 - The number of FOI requests made since 1st November 2018, or the specific date in November 2018, when your current Publication Scheme: Freedom of Information Act was issued, that were responded to in hardcopy
 - Copies of publication schemes, or equivalent FOI policies, that were in place prior to your current Publication Scheme: Freedom of Information Act being issued
25. The request on 26 September 2023 was for:

- Procedures/protocols to allow the collection of pupils from after school activities that were in place 11th June 2023.
- Procedures/protocols to allow the collection of pupils from after school activities that were in put in place after 11th June 2023.
- Procedures/protocols to allow visitors to access the school reception during the school day (08:35 - 15:25).
- Procedures/protocols to allow visitors to access the school reception after the school day (15:25 onwards).
- Details of the physical measures (doors, door locks, access controls, etc) used to control access to the school reception during the school day (08:35 - 15:25).
- Details of the physical measures (doors, door locks, access controls, etc) used to control access to the school reception after the school day (15:25 onwards).
- Details of any changes made to the physical measures (doors, door locks, access controls, etc) used to control access to the school reception that were made after 11th June 2023.
- Details of any procedures/protocols/rules governing the physical measures (doors, door locks, access controls, etc) required to control access to the school reception that were in place 11th June 2023.

26. The request on 27 September 2023 was for:

- Full trading details of the external provider from whom you currently buy in advice on data protection, or data protection officer services from.
- The amounts spent on their services each year since their appointment, or your first engagement with them.

27. On 9 October 2023 the school issued a joint response to the three FOIA requests made on 14, 26 and 27 September 2023. The school refused the requests under section 14(1) FOIA (vexatiousness).

28. The school upheld its position on internal review.

The decision notice

29. In a decision notice dated 19 April 2024 the Commissioner decided that the three requests were vexatious requests under section 14 FOIA.
30. Although the Commissioner accepts that a number of hours has been occupied in dealing with these requests the Commissioner noted that the school has not cited section 12 but rather section 14 which has a high bar if it is to be considered as “grossly oppressive”.
31. The Commissioner stated that he was mindful of the legislation not being undermined by vexatious FOI requests. He therefore took into account the number of requests made within one month. The Commissioner also stated that he had borne in mind his guidance to complainants that “You should not make requests as a way of ‘punishing’ a public body if you think they have done something wrong.” He accepts that the requests were partly motivated by a serious intent and the email exchanges between the complainant and the school are polite. However, there was a drift into requests where the focus had shifted. Ultimately the Commissioner was not persuaded that the value and serious purpose of the requests outweighs the difficulties there can be when compliance with the FOIA absorbs staff time and resources in a small public authority.

Notice of appeal

32. In essence, the grounds of appeal are that the Commissioner was wrong to conclude that the requests were vexatious.

The Commissioner’s response

33. The Commissioner opposes the appeal and stands by his decision notice.

Legal framework

S 14(1) Vexatious requests

34. Guidance on applying section 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC).
35. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA. That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if ‘the high standard set by vexatiousness is satisfied’ (para 72 of the CA judgment).
36. The test under section 14 is whether the request is vexatious not whether the requester is vexatious. The term ‘vexatious’ in section 14 should carry its ordinary,

natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule.

37. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account. The Commissioner's guidance that the key question is whether the request is likely to cause distress, disruption, or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request.
38. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic checklist.
39. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.
40. As to burden, the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is properly to be described as vexatious. In particular, the number, breadth, pattern, or duration of previous requests may be a telling factor. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request.
41. Ultimately the question was whether a request was a manifestly unjustified, inappropriate, or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests.
42. In the Court of Appeal in **Dransfield** Arden LJ gave some additional guidance in paragraph 68:

“In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. 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. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...”

43. Nothing in the above paragraph is inconsistent with the Upper Tribunal’s decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.
44. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a ‘trump card’. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

The role of the tribunal

45. The tribunal’s remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner’s decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Evidence and submissions

46. We had before us and took account of where relevant an open bundle. We heard oral submissions from Mr. Allison.

47. Although the panel was initially provided with a closed bundle, following a case management order from the Judge requiring further explanation as to how disclosure of the closed information would defeat the purposes of the appeal, the Commissioner withdrew the rule 14 application, and the information was moved into the open bundle.
48. As the information formerly in the closed bundle was only provided to the appellant two days before the hearing, the tribunal offered him the opportunity to provide written submissions after the hearing, but he was happy to proceed on the basis of oral submissions.

Mr. Allison's oral submissions

49. We heard and took account of oral submissions from Mr. Allison.

Discussion and conclusions

Section 14

Preliminary observations

50. In Kennedy v Charity Commission [2014] 2 WLT 808, Lord Sumption, with whom Lord Neuberger and Lord Clarke agreed, said as follows, at para 153:

“The Freedom of Information Act 2000 ... introduced a new regime governing the disclosure of information held by public authorities. It created a *prima facie* right to the disclosure of all such information, save in so far as that right was qualified by the terms of the Act or the information in question was exempt. The qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure. The Act contains an administrative framework for striking that balance in cases where it is not determined by the Act itself. The whole scheme operates under judicial supervision, through a system of statutory appeals.”

51. It is important to remind ourselves of those observations. FOIA creates prima facie right to disclosure of information held by public authorities, save in so far as that right is qualified by the terms of FOIA or the information in question is exempt. Further, we remind ourselves that the qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure.
52. The purpose of section 14 is “to protect the resources (in the broadest sense of that word) of the authority from being squandered on disproportionate use of FOIA.” (UT, *Dransfield*, para 10). In order to achieve this purpose, as the Court of Appeal noted (CA, *Dransfield*, para 68), Parliament has chosen to use a strong word, and therefore the hurdle of satisfying it is high.

53. Section 14 must not be interpreted in a way that in effect introduces a 'public interest' threshold that all requestors have to pass. If no exemption is engaged, there is a right to disclosure of information held by public authorities whether or not there is any public interest in disclosure.

54. We note what the Upper Tribunal said in Dr Yeong-Ah Soh v Information Commissioner and Imperial College London [2016] UKUT 0249 (AAC) [79] and [80] (Soh):

"79. The FTT's reasons conclude that "at the time the requests were made they were vexatious in their content by reason of the burden on the [second respondent] ... and the distress to the second mentor ...; the benefit sought from the disclosure was [the appellant's] private interest ... not the public interest. It was an inappropriate use of the FOIA and therefore vexatious". From these words, I find it inescapable that, at the least, a factor in the FTT's decision was the perceived lack of any public interest in the appellant's request for information.

80. However, it seems to me that the real issue is whether there was a value or a serious purpose to the appellant's request. A request can have a value or a serious purpose while serving an entirely private interest. Judge Wikeley referred to objective public interest. He later stated at paragraph 14 that "of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14". He continued, "..., unless there are other factors present which raise the question of vexatiousness".

81. It appears to me that the FTT would err in law if it considered that the request was vexatious for lacking public interest alone."

55. Nor should section 14 be interpreted in such a way that it operates as a 'catch all' exemption. It should not be used to avoid the need to consider whether the authority is entitled to rely on an exemption to withhold the information, even where it might appear obvious to the authority, the Commissioner or to the tribunal that the requested information ought to be withheld either in the public interest or for some other reason. Parliament has chosen which exemptions to include and determined how those exemptions operate in order to embody the 'careful balance' identified above. Section 14 is not designed to avoid the need to consider the application of individual exemptions.

Application of section 14

56. Although the four broad issues or themes identified by the Upper Tribunal in Dransfield are not exhaustive and are not intended to create a formulaic checklist, they are a helpful tool to structure our discussion, although some elements do not fit neatly under one heading. In adopting this structure, we have taken a holistic

approach, and we bear in mind that we are considering whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

Burden

57. In assessing burden the number, breadth, pattern and duration of FOIA requests are relevant to the question of misuse of FOIA by an individual. Related correspondence can also be taken into account. In Soh, the Upper Tribunal stated:

“94. The issue of burden was addressed by Judge Wikeley in *Dransfield* as involving questions as to the number, breadth, pattern and duration of FOIA requests in terms of the misuse of the FOIA by an individual. However, it is clear that related correspondence can also be considered.

95. ... the Court of Appeal has clearly warned against applying bright line rules as to what evidence should be taken into account when addressing the question of whether a request is vexatious. A rounded approach is required. Thus, I consider that a DPA request can properly be addressed in determining whether a FOIA request is vexatious, to the extent that it is relevant. I accept the general proposition that the decision maker should consider all the circumstances in order to reach a balanced conclusion as to whether a request is vexatious, without artificially excluding particular types of evidence.”

58. We are entitled to look at the burden of each of the three requests in the light of the other two requests and related correspondence, up to the point at which the school responded to the requests. We have not taken into account any matters that took place after the response to the requests, save insofar as they cast light on the position at the relevant time.
59. We have not been told of the administrative or other resources available to the school, but we are prepared to assume that they are reasonably limited. Although the school has access to external advice from a data protection officer, there is unlikely to be a dedicated individual or team to deal with information requests. We have taken this into account when considering burden.
60. The school estimated that by March 2024 staff had spent over 100 hours discussing preparing and writing information for Mr. Allison. That does not assist us in considering the burden at the relevant date, because there is no indication of how many of those hours were before the response to the requests in issue.
61. We have taken into account the burden of responding to the related request made on 6 September, and the correspondence that followed that request. We have not been told how long it took to respond to the request or how much time was spent dealing with this correspondence or. We know that the school agreed to scan the information provided, but we do not know how many pages there were. Doing our

best on the limited information available, we accept that there was some burden on the school in responding to the request of 6 September and in dealing with the email correspondence that followed.

62. This was then followed by three emails containing the requests in issue, one of which was sent before the school had responded to the request of 6 September.
63. The school has not stated that it would be particularly burdensome to respond to the requests looked at in isolation. The request of 14 September asks, in essence for the number of FOI requests made and the format of the responses in certain periods and for the publication policy. That request is not obviously burdensome. The request of 26 September focuses mainly on policies that, if held, would probably be reasonably easy to retrieve. It also asks about information on changes to physical barriers to entry, which also would probably not be difficult to retrieve if held. The request of 27 September simply asks for the details of the external data protection advisor and how much is paid for that service.
64. Looked at in isolation, none of the three requests appear to be particularly burdensome. However, following shortly after an earlier request, the appellant made three multi-part requests in quick succession, one of which was sent before the earlier request had been responded to. Although the request of 26 September is more granular than the request of 6 September, there is likely to be some overlap in the information in scope. Taken together, along with the related email correspondence we accept that this would place some burden on an organisation with reasonably limited resources like the school.

Purpose or value

65. Mr Allison submits that requests were made about security measures and protocols because the school's reception was open and unstaffed on 11 July 2023 so there was free access into the school and the Assistant Head had insisted that there was a protocol in place that required people to sign in, to collect children from afterschool clubs.
66. He submits that requests were made about FOI and related advice because the Head of School asserted that, contrary to his understanding of the policy, responses to requests had to be in hardcopy, and that they were acting against advice from their DPO.
67. We accept that this was the purpose behind making the requests, and this is dealt with further under motive below.
68. In response to questions from the tribunal Mr. Allison realised in the hearing that he had made an error in the requests by asking for information with reference to the date of 11 June rather than the date of 11 July. He has repeated that error in a number of documents in the course of these proceedings.

69. Whilst we accept that was an error, and we understand from Mr Allison that this may have been due to dyslexia, we have to consider the value of the information that has been requested, rather than the value of the information Mr. Allison intended to request. For that reason, where Mr. Allison has requested policies etc. before and after 11 June 2023, presumably in an attempt to ascertain if anything had been changed as a result of the incident in question, no useful information could be obtained because the wrong date has been used. For that reason, the four parts of the request on 26 September that mention the date of 11 June were unlikely to elicit any useful comparative information.
70. In relation to the remainder of the request on 26 September, we accept that the policies requested would be of some value to Mr. Allison in that they would assist him in understanding the protocols and policies in place in relation to collection of pupils from after school activities and the safeguarding measures that the school took. In addition, given that the appellant appears to have gained access to the school premises without signing in we find that there is also a general interest in scrutiny of the school's safeguarding measures and policies on access etc.
71. The request of 14 September has less obvious value to the public, but we accept that it was of value at least to Mr. Allison in understanding why the school had maintained that it had to provide hard copies under its policy even though, as we explain below he appears to have misunderstood the school's publication scheme.
72. The tribunal takes the view that Mr. Allison has misunderstood the school's publication scheme. The commitment to publication in an electronic form at the start of the scheme applies to 'datasets' as defined in section 11(5) of the Freedom of Information Act, not to all information. A 'dataset' is a collection of information held in electronic form.
73. In relation to other information, the scheme commits the school to proactively publish *as a matter of routine* certain information and to specify the methods by which the specific information is routinely made available. Most of the information is specified as being available either on the school website or 'hard copy on request'. Presumably that is what the school was referring to. If the requested information falls outside the information in the publication scheme it is dealt with as a FOIA request.
74. Mr. Allison is right that if, at the time of making his request, a requestor expresses a preference for communication in a particular form the public authority shall so far as reasonably practicable give effect to that preference, although Mr. Allison did not express a preference at the time he made the request. This is in accordance with the advice given by the DPO.
75. By the time of the request of 27 September, in our view the value of the requests is diminishing and Mr. Allison is beginning to drift from his initial serious purpose as

set out above. There is no significant value to Mr. Allison in knowing who is providing data protection advice and how much they are being paid. There is always some, albeit limited in this case, value in scrutiny of what schools are spending their money on and how much they are spending.

76. Overall we do not accept that this is a case where there is no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public.

Motive

77. Having heard from Mr. Allison in the hearing, and taking into account the evidence in the bundle, we do not accept that any improper motive can be discerned with a sufficient degree of assurance. Although the requests clearly arose out of the incident on 11 July, we accept that his purpose in making the requests was as set out above, rather than a personal grudge or a simple desire to cause inconvenience and disruption.

Harassment and distress

78. Whilst we accept that in a small organisation receiving four multipart FOIA requests over a short period of time will have put staff under pressure, Mr. Allison has been courteous in his correspondence and there is no evidence of harassment or distress.

Conclusions

79. One of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account. It is important for that qualified right of access that vexatiousness is a high hurdle. Further, whilst we have structured our discussion around a number of convenient headings, we must take a holistic approach to our assessment, and we bear in mind that the fundamental question is whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.
80. We accept that this case does bear some hallmarks of a vexatious request. A number of related multi-part requests were made during a short period, one of which was made before the previous request had been answered. The final request does show a drift away from the initial serious purpose of the request.
81. However we have been unable to discern any improper motive with a sufficient degree of assurance and there is no evidence of distress or harassment. Whilst parts of the requests, and the final request in particular, have limited value, we do not accept that these are requests which have no reasonable foundation.

82. Further, there is very limited evidence of any significant burden on the school by the time of the response to the requests, even taking into account that the school has reasonably limited administrative resources.
83. Looked at holistically and in the light of all the matters set out above we find that answering the requests would not have been a disproportionate use of resources and that the requests were not vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

Signed

Sophie Buckley

Date:

11 October 2024