

Freedom of Information Act 2000 (Section 50)

Decision Notice

15 December 2008

Public Authority: The Governing Body of Garforth Community College
Address: Lidgate Lane
Garforth
Leeds LS25 1LJ

Summary

The complainant requested information relating to 3 teachers and a governor of the public authority. The public authority refused to provide a full response citing Section 14(2) (Repeated request) in relation to one part of the request and Section 14(1) (Vexatious request) in relation to the other part of the request. The Commissioner has decided that the public authority correctly cited Section 14(1) and Section 14(2) as its basis for not providing a full response to the request. However, the public authority failed to respond to the complainant within 20 working days as required by Section 17(5) of the Act where a public authority seeks to rely on Section 14 as its basis for refusing a request. No steps are required.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

Background

2. The complainant in this case made a previous complaint about the public authority to the Commissioner. The Commissioner issued a decision notice as a result of that complaint on 26 November 2006 (the "2006 decision"). This full text of the 2006 decision (Ref. FS50088779) can be accessed via the Commissioner's website.
http://www.ico.gov.uk/upload/documents/decisionnotices/2006/fs50088779_dn.pdf.

3. In that earlier case, the complainant made the following request:
 - a. *All information held about bullying complaints [at the public authority]*
 - b. *All information held about [Teacher A] including complaints about him and his behaviour generally*
 - c. *Ditto [Teacher B]*
 - d. *Ditto [Teacher C]*
4. Regarding part a) of the earlier request, the public authority initially stated that it did not hold the requested information. The Commissioner's investigation found that it did hold such information but following further enquiries the Commissioner determined that the location, extraction and retrieval of such information would exceed the appropriate limit of £450. This limit is set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI No. 3244). At paragraph 55 of the Notice, the Commissioner set out a location, extraction and retrieval exercise which could, in his view, be carried out by the public authority without exceeding the appropriate limit. This was as follows:

"In passing, the Commissioner notes that the College could examine the records of 4 - 5 classes of students within the appropriate limit based on its own calculations where it receives further requests for information of this nature".
5. Regarding parts b), c) and d) of the earlier request, the Commissioner considered these in two sections.
6. Firstly, he considered whether the public authority held any information about complaints about the three teachers and their behaviour. As set out in paragraph 56 of the 2006 decision, the Commissioner was satisfied that the public authority did not hold records, official or otherwise, of complaints made against the three teachers other than ones made by the complainant himself.
7. Secondly, he considered whether any other of the information held by the public authority about the three teachers should be disclosed under the Act. The Commissioner's reasoning and analysis is set out in paragraphs 57 – 70 of the 2006 decision. At paragraph 70 of the 2006, the Commissioner concluded that the information was exempt from disclosure under Section 40(2) by virtue of Section 40(3)(a)(i) because disclosure would contravene the first data protection principle of the Data Protection Act 1998 ("DPA98").
8. It should be noted that during his investigation of this earlier case, the Commissioner asked the complainant to specify what information he was interested in other than information about bullying complaints made against the teachers. This was an attempt by the Commissioner to focus on the key information that the complainant was seeking.

Unfortunately, the complainant refused to specify what other information he was interested in.

The March 2007 Request

9. On 7 March 2007, the complainant made the following request under the Act to the public authority [using the complainant's numbering]:
 - 2) *"All the information that you have concerning [Teacher B] in the categories of:*
 - a) *complaints about him at Garforth Community College concerning bullying of 11 year [sic] pupils during '04"*
 - b) *ditto [Teacher A]*
 - c) *ditto [Teacher C]*
 - d) *salaries, remits, expenses regarding personnel quoted in 2a), b) and c) and whether they have criminal convictions and if so, what.*
 - e) *ditto [Member of Governing Body]"*
10. A different organisation, Education Leeds, conducted correspondence with the complainant on the public authority's behalf, acting as its agent. The relationship between Education Leeds (the "agent") and the public authority has been set out in paragraphs 4 to 8 of the 2006 decision. The public authority responded to the complainant's request via its agent in a letter dated 24 April 2007.
11. It described parts 2a), 2b) and 2c) as repeated requests. It said that the Commissioner had already investigated the public authority's response to these parts of the request and had agreed with the public authority's interpretation of the Act. It said that as a consequence it did not propose to deal with this request again and sought to rely on Section 14(2) of the Act to justify its position in this regard.
12. In relation to parts 2d) and 2e), the public authority described these as new requests but commented that it was treating them as vexatious under the provisions of Section 14(1) of the Act. It referred to the Commissioner's published guidance on the Section 14 in support of its position. It referred to amount of the time it had already expended in dealing with his requests and other contacts describing this as being *"to the detriment of daily business"*.
13. Referring to the detail of the Commissioner's guidance it also said that *"a request can be classified as vexatious if it could be regarded by a reasonable person as obsessive."* It said that this description was appropriate *"in the light of the volume and frequency of contact with the College, both direct and indirect, in relation to this and your previous requests under various statutory access frameworks"*.

14. It added that “[it] *is with regret that it has become necessary to invoke this provision of the Act; however in light of your requests and frequent contact with the College to the detriment of ordinary business we have little alternative*”.
15. It offered the complainant a right of appeal and gave him information about his right to complaint to the Commissioner under Section 50 of the Act.

The Investigation

Scope of the case

16. On 26 April 2007 the complainant contacted the Commissioner to complain about the way his 7 March 2007 request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The public authority and its agent had delayed responding to him
 - The public authority had not provided a proper response to his request
17. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

18. The Commissioner called Leeds City Council on 23 May 2007 regarding a related case. It was noted that correspondence regarding this complaint had been passed by Leeds City Council to the agent (a not-for-profit company wholly-owned by Leeds City Council). On the same day, the agent forwarded a copy of its letter of 24 April 2007 (see paragraph 10 above) to the Commissioner because the complainant had not forwarded a copy himself.
19. The Commissioner normally expects complainants to collate and provide evidence of pre-complaint correspondence themselves and does not normally proceed with complaints where complainants fail to provide supporting evidence. However, the Commissioner considered it expedient to do so in this case because he was in correspondence with Leeds City Council on related matters.
20. The Commissioner noted that the complainant had not requested an internal review of the public authority’s refusal to provide the requested information even though one had been offered in the agent’s letter dated 24 April 2007.

21. The Commissioner wrote to the complainant on 9 June 2007 to advise that he did not propose to proceed with an investigation of the public authority's refusal to provide requested information because the complainant had not sought an internal review of that refusal. Under Section 50(2)(a) of the Act the Commissioner is not obliged to make a decision about a complaint if the complainant has not exhausted any internal review procedure that is offered by the public authority.
22. The complainant contacted the Commissioner on 20 July 2007 to ask whether he would be willing to proceed with investigating the complaint even though the public authority's internal review procedure had not been exhausted. The Commissioner agreed to consider his request and to seek the public authority's comment. The Commissioner contacted the public authority on 23 July 2007 and sought its view. Taking into account the views of both parties, the particular circumstances of this case and the fact that it related to an earlier complaint for which a decision notice had already been issued, the Commissioner agreed to proceed with his investigation without an internal review.
23. This was confirmed in writing to both parties on 24 July 2007.
24. The complainant contacted the Commissioner on 10 September 2007 setting out the particulars of his concerns in more detail. He stressed the serious nature of his concerns about the way the public authority had treated his children arguing that any reasonable person would be interested in parts 2d and 2e of his request given this background. He set out the difficulties he faced in communicating with the public authority due to incorrect statements that had been made about him. As an example of incorrect statements made by the public authority, he cited the 2006 decision. In the Commissioner's investigation of this earlier complaint, he found that the public authority did hold bullying complaints despite the fact it had previously told the complainant that it did not hold such information.
25. In relation to parts 2a), 2b) and 2c) of his request, he argued that these were not repeated requests because he had not mentioned a particular year or a particular group of pupils in his previous request.
26. He also expressed his views on the public authority, its agent, Education Leeds, and Leeds City Council and asserted that it was their unhelpfulness that made it difficult for him to raise concerns. He also asserted that they preferred to rely on "loop-holes" to avoid their responsibilities and commented that he did not have access to legal advice in contrast to that which was available to the other side. Finally, he disputed the assertion that he was obsessive and described the difficulties he had experienced in seeking resolution of his data protection concerns.

28. On 26 June 2008, the Commissioner wrote to the public authority's agent to ask for further comment on a number of points.
29. The Commissioner noted that he had accepted in his 2006 decision that the public authority did not hold bullying complaints about the three teachers (paragraph 56 of the 2006 decision refers). However, the Commissioner drew the public authority's attention to a recent decision of the Information Tribunal *Bromley V The Information Commissioner and The Environment Agency [EA/2006/0072]*. This was a case whose central issue was whether an authority (in that case the Environment Agency) held any further information which fell under the scope of a request.
30. The Commissioner quoted an extract from paragraph 13 of that Tribunal ruling which acknowledged that the test as to whether information was held or not was on the balance of probabilities and one could seldom be absolutely certain that requested information was not held. However, relevant information may come to light at a later stage.
31. The Commissioner asked whether, with the above in mind, any new information had come to light since the previous case which would be caught by the scope of the complainant's request in this case. The Commissioner noted that the complainant has focussed in particular on any bullying complaints that might be recorded in relation to the three teachers' dealings with Year 11 in 2004. The Commissioner asked whether the public authority had subsequently found any information regarding complaints about bullying made against the three teachers.
32. The Commissioner also referred to earlier unrelated decision notices regarding the disclosure of salary and expense information and commented that he had frequently ordered the disclosure of e.g., salary band information. Taken at face value, we would not normally consider requests for this type of information to be vexatious although it does not follow that we would order disclosure to the level of detail requested by the complainant. This would depend on the circumstances of each case.
33. Noting the restrictions imposed by the DPA98 on the disclosure of sensitive personal data, the Commissioner acknowledged that it was unlikely that he would order the disclosure of information under the Act of any of the individuals' criminal convictions, if such information were held. However, he commented that this did not automatically make a request for this sort of information a vexatious request.
34. The Commissioner acknowledged that he had some copies of correspondence between the parties. He also acknowledged that he had knowledge of meetings between the parties and matters discussed where either party has reported this to him. He observed that relations between the parties did not appear to have improved since his earlier decision notice. However, the Commissioner asked for further evidence

to support the public authority's view that parts 2d) and 2e) of the complainant's request are vexatious.

35. The public authority responded via its agent in a letter dated 22 July 2008.
36. With regard to parts 2a), 2b) and 2c) of the complainant's request, it said it felt that the request had already been dealt with and it did not consider it relevant to provide information about bullying complaints made against the three teachers after the date of the original request. However, the agent commented that it had contacted the public authority who confirmed verbally "*that they were not aware of any subsequent bullying incidents*".
37. With regard to parts 2d) and e) it restated the points it had made in its letter to the complainant dated 24 April 2007.
38. In response to the Commissioner's request for substantiating evidence, the agent referred to a point it had made in relation to the case which led to the 2006 decision. The complainant had explained early on in his dealings with the public authority and its agent due to a medical condition his ability to conduct written communications was restricted. Much of his contact with the public authority and its agent was done either over the phone or in person. In the case which led to the 2006 decision, the agent had told the Commissioner that it had no evidence except its word to support its assertions that contact between the parties was as it had set out. The Commissioner had accepted its word in that case as explained in paragraph 6 of the 2006 decision.
39. The agent went on to explain that the complainant had been banned from its premises and from Leeds City Council's premises due to his repeated demands and his behaviour towards members of staff unless attending a mutually agreed appointment with a named officer. It had told the complainant that these meetings would only take place to discuss new issues or new requests for information. It advised that the ban had recently been lifted and that new requests for information had been received from the complainant which were being dealt with under either DPA98 or this Act.
40. The agent advised that the complainant continued to pursue matters which, in its view, had already been dealt with and supplied copy correspondence from June and July 2008 as evidence. The correspondence appeared to show that although the agent had made offers of appointments to discuss new matters, the complainant had not taken up these offers.

Findings of fact

41. In the 2006 decision, at paragraph 7, the Commissioner considered whether Education Leeds was authorised to act on behalf of the public

authority as its agent. Having read an email confirming that relationship, the Commissioner was satisfied the Education Leeds was authorised in that case to act on the public authority's behalf. The Commissioner has not sought additional assurances in this case because he considers it reasonable in the circumstances to assume that Education Leeds remains authorised to act on the public authority's behalf.

Analysis

Timing of response

42. The public authority failed to respond to the complainant within 20 working days. In failing to do so, it contravened the requirements of Section 17(5) of the Act. Full details of Section 17(5) are set out in a legal annex to this notice.

Section 14 – Vexatious and repeated requests.

43. The public authority has argued that the first 3 elements of the complainant's request are repeated requests and it is therefore not obliged to respond to them by virtue of Section 14(2). It argues that the remaining two elements of the complainant's request are vexatious and it is not obliged to respond to them by virtue of Section 14(1). Full details of Section 14 are set out in a legal annex to this notice.

Section 14(2) – repeated requests

44. The public authority argues that parts 2a), 2b) and 2c) of the complainant's request of 7 March 2007 are identical or substantially similar to the first three elements of his request of 27 January 2005.
45. There are two limbs to this section. The first limb sets out that a public authority is not obliged to comply with a request that is identical or substantially similar. However, this is qualified by the second limb of the same section which states "*unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.*"

Are the requests identical or substantially similar?

46. For comparison, the 2 requests are set together as follows:

27 January 2005	7 March 2007
<p><i>b. All information held about [Teacher A] including complaints about him and his behaviour generally</i></p> <p><i>c. Ditto [Teacher B]</i></p> <p><i>d. Ditto [Teacher C]"</i></p>	<p><i>"All the information that you have concerning [Teacher B] in the categories of:</i></p> <p><i>a) complaints about him at Garforth Community College concerning bullying of 11 year [sic] pupils during '04"</i></p> <p><i>b) ditto [Teacher A]</i></p> <p><i>c) ditto [Teacher C]</i></p>

47. The complainant argues that the two sets of requests differ because he has narrowed the scope of his request about complaints against the teachers to "*bullying of 11 year pupils during '04*". The Commissioner has assumed the complainant means Year 11 pupils because the word "year" is handwritten above the number 11 although slightly after it.
48. The public authority argues that it has already complied with a substantially similar request for information about complaints about the 3 teachers for this period. It further argues that the answer it gave when complying with this request was accepted as correct by the Commissioner in his earlier decision. As such, it is not obligated to provide a response again.
49. Paragraphs 53 – 55 of the 2006 decision set out the Commissioner's findings in relation to the public authority's assertion that it held no information about bullying in general. The Commissioner found that it did hold such information in individual pupils' records although it would exceed the appropriate limit of £450 (set by regulation) to locate, retrieve and extract this information from these records. At paragraph 55 of the 2006 decision, the Commissioner noted what could, in principle, be located, retrieved and extracted within the £450 limit in relation to general information about bullying.
50. Had the complainant requested in March 2007 general information about bullying complaints in relation to year 11 pupils during 2004, the Commissioner agrees that this would be a different request. However, the complainant did not make such a request. Instead, he repeated his request for information about bullying complaints made against the three teachers and focussed on their dealings with year 11 pupils in 2004. The Commissioner fails to see how this differs substantially from the complainant's 27 January 2005 request for all information including complaints about the three teachers and their behaviour generally.

Effect of passage of time

51. In his 2006 decision, the Commissioner was satisfied that at the date of the complainant's 27 January 2005 request, the public authority did not hold any information about complaints on any subject (including bullying) in relation to the 3 teachers. This would include any information about complaints about them in relation to Year 11 pupils during 2004 (paragraph 56 of the 2006 decision refers).
52. That said, if, in the passage of time between the 2006 decision and the request in this case, new evidence had come to light to show that the public authority did in fact hold information about complaints against the three teachers about bullying that occurred in 2004, the Commissioner believes that the public authority could not rely on Section 14(2) even though the two requests are substantially similar.
53. The complainant did not provide any evidence with his complaint in this case to support his assertion that information about complaints against the teachers was held. Had he done so, the Commissioner would have challenged the public authority's assertion that no such information was held.
54. Having queried the point with the public authority via its agent, the Commissioner also is satisfied that no further information has come to light from the public authority's side to suggest that it was wrong in its assertion in 2005 that it did not hold information about bullying complaints against the teachers.

Section 14(2) - Conclusion

55. As such, the Commissioner is satisfied that parts 2a), 2b) and 2c) of the complainant's request repeat the complainant's request of January 2005 and that the public authority is not obliged to respond to these elements of his request by virtue of Section 14(2).

Section 14(1) – Vexatious request

56. The public authority applied Section 14(1) to parts 2d) and 2e) of the complainant's request. This was for
 - d) *salaries, remits, expenses regarding [Teachers A, B and C] and whether they have criminal convictions and if so, what.*
 - e) *ditto Governing Body Member D*
57. Section 14(1) provides no further detail as to what constitutes a vexatious request. However, when seeking to rely on Section 14(1), a public authority cannot argue that a request is vexatious because it considers the requester to be vexatious.

58. It is regrettable that the public authority and its agent have had cause to ban the complainant from their premises except in limited circumstances. The rightness of this decision is not a matter for the Commissioner but he can assume that it was not a decision that was taken lightly. While this state of affairs suggests relations between the parties have not improved since the 2006 decision, it does not automatically mean that any request the complainant makes is a vexatious one.
59. The Commissioner has issued a number of decisions notices where Section 14(1) is the matter at issue. Several of these decision notices have been appealed to the Information Tribunal. Most recently, in *Welsh vs Information Commissioner*, the Tribunal made the following comments at paragraph 26:
- “ ...we note that Parliament has not sought to define the term [vexatious] further at all. The word is used in various other legal contexts, such as vexatious litigants, or when considering whether costs should be awarded against a party, but we have not generally found these other contexts helpful. As the Tribunal pointed out in Hossack v Department for Work and Pensions, EA/2007/0024, in paragraph 11: ‘the consequences of finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in these other contexts, and therefore the threshold for a request to be found vexatious need not be set too high’. Indeed, there is a danger that setting the standard of vexatiousness too high will diminish public respect for the principles of free access to information held by public authorities enshrined in FOIA. There must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested.”*
60. In paragraph 27 of the same judgment, the Tribunal made the following comment about the Commissioner’s published guidance on Section 14 (which the public authority referred to in its correspondence with the Commissioner). *“We find that Guidance interesting and helpful, but we are cautious about elevating the two-stage test there into a necessary sequence... We agree with the [Commissioner] that significant burden is not just a question of financial resources, but includes issues of distraction and diversion from other work.”*
61. The two-stage test that the Tribunal refers to is found in the Commissioner’s Awareness Guidance 22 http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf and is set out as follows:

A request can be treated as vexatious where:

- a) it would impose a significant burden on the public authority in terms of expense or distraction;
- and**
- b) it meets at least one of the following criteria.
- It clearly does not have any serious purpose or value
 - It is designed to cause disruption or annoyance
 - It has the effect of harassing the public authority
 - It can otherwise fairly be characterised as obsessive or manifestly unreasonable
62. The Commissioner believes that Tribunal judgment on the Welsh case lowers somewhat the threshold that he had set in his published guidance. It is this guidance which the public authority referred to when arguing that it could rely on Section 14(1).
63. During the drafting of this notice, the Commissioner's office was also finalising a revised guidance document on the application of Section 14 for publication which took into account more recent Tribunal rulings on the application of Section 14(1).
64. In considering the merits of the public authority's arguments, the Commissioner will consider the context and history of the request. He will also consider the strengths and weaknesses of both parties' arguments in relation to the following five factors.
- whether compliance with the request would create a significant burden in terms of expense and distraction
 - whether the request is designed to cause disruption or annoyance
 - whether the request has the effect of harassing the public authority or its staff
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - whether the request has any serious purpose or value

Do parts 2d and 2e of the request impose a significant burden in terms of expense and distraction?

65. At paragraph 21 of its judgment in the Welsh case, the Tribunal commented that "*In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background*". Ordinarily, the Commissioner would not agree that responding to a request for information such as the one set out in parts 2d) and 2e) would have a significant burden on any public authority. The public authority may refuse to provide the information because it considers it to be exempt but it would not ordinarily impose a significant burden to provide such a refusal.

66. However, the context and background to this request is highly significant.
67. The complainant has raised a number of concerns with the public authority about the way his children's educational experience there. These are not matters for the Commissioner. However, it is evident from the wording of this request and the request made in the 2006 decision, that the complainant believes his children have suffered bullying. It would also appear that the complainant believes that three teachers at the public authority have directly or indirectly been responsible for the bullying the children have allegedly suffered. This is a very serious allegation. Any parent would rightly be very concerned if their child reported such an experience or if their child displayed behaviour which suggested they might have had such an experience. It is wholly understandable that the complainant would wish to pursue vigorously any concerns he might have in this regard. It is also understandable that relations between him and the public authority might suffer in his pursuit of his concerns particularly where he feels the public authority has failed to address them.
68. The complainant in this case has a medical condition which impacts on his ability to raise his concerns in writing. Under the Disability Discrimination Act (DDA), organisations are obliged to make reasonable adjustments in order to ensure that individuals with disabilities are not substantially disadvantaged when trying to access that organisation's services. In this case, the complainant finds it easier to conduct his business over the telephone or in person with a written record being agreed by the parties after the fact.
69. It is not the Commissioner's role to determine whether or not the public authority has complied with its obligations under the DDA in its dealings with the complainant. The Commissioner has not received any evidence of an adverse ruling from a more appropriate authority on the matter, e.g., a court ruling or an adverse comment from the Equality and Human Rights Commission.
70. However, if it appeared to the Commissioner that the public authority was, in general terms, seeking to avoid its DDA obligations by declaring the request in this case as vexatious, he would determine that the public authority could not rely on Section 14 of the Act. For example, if the public authority had never offered the complainant the alternative of telephone contact or contact in person and had argued that it would impose a significant burden in terms of expense and distraction in order to do so, the Commissioner would not agree. However, that is not the case here.
71. It is clear that the public authority via its agent remains prepared to meet with the complainant or to speak to him on the telephone to discuss new issues. However, it is not prepared to meet with the complainant or to speak to him on the telephone via its agent to

discuss matters it believes it has already dealt with even if the complainant is dissatisfied with the outcome of those earlier dealings. In the Commissioner's view, the public authority would appear to be attempting to focus the complainant's attention on any new issues he might wish to raise. It is also clear that the complainant remains concerned about the conduct and suitability of the three teachers and is not satisfied with any assurances he may have received from the public authority about them. He also appears to have concerns about a member of the governing body of the school and his suitability for such a responsible post hence his request at 2e).

72. In the Commissioner's view, the complainant's further attempt to find out information about the three teachers in question and about a member of the governing body place a significant burden on the public authority in the context of what has already been covered in correspondence and meetings between them. The Commissioner is satisfied that the public authority has already addressed the complainant's concerns about the individuals concerned albeit not to the complainant's satisfaction. Revisiting the matter would distract the public authority from its main business, namely the provision of educational services to children. If the complainant remains dissatisfied about the educational services provided to his children and the suitability of the individuals in question, other complaint mechanisms are open to him as will be shown below.
73. Unfortunately, as outlined in paragraph 38, neither party has kept particularly detailed records of their dealings with each other. The absence of detailed records was addressed in the 2006 decision at paragraph 6. In that case, the Commissioner decided to give the benefit of the doubt to the public authority's agent that the course of their dealings was as set out by that agent. The public authority has suggested that the Commissioner should also do so in this case. The Commissioner is prepared to do so in the unique circumstances of this case but would comment that the public authority's argument as to significant burden would have had even greater weight if it had been supported by a catalogue or chronology of dealings between the parties.

Are parts 2d and 2e of the request designed to cause disruption and annoyance?

74. The complainant's contact with the public authority and with its agent has been restricted because of concerns that have been raised regarding the complainant's conduct on their respective premises. However, the Commissioner has seen no evidence which indicates that the complainant's request was designed to cause disruption and annoyance, for example, an explicit statement to that effect from the complainant.

Do parts 2d and 2e of the request the request have the effect of harassing the public authority or its staff?

75. The complainant's request at 2d) and 2e) imply a view that certain employees or governors at the public authority are unsuitable for their post because they are likely to have a criminal record. An otherwise unsubstantiated allegation of criminality could, in the Commissioner's view, be construed as having the effect of harassing or causing distress to the individuals in question. However, the Commissioner notes that the public authority has not given particular weight to this point. It has not, for example, provided recent personal statements to that effect from the individuals concerned. Such statements were provided in the form of DPA98 Section 10 Notices in relation to the case which led to the 2006 decision but the public authority has not sought to rely on these earlier DPA98 Section 10 notices or on recent personal statements of a similar nature in this case.

Can parts 2d and 2e of the request otherwise be fairly characterised as obsessive or manifestly unreasonable?

76. The public authority believes that any reasonable person would consider these two elements of the whole request to be obsessive. Naturally, an individual, such as the complainant, who is seeking to achieve a satisfactory educational experience for his children will be determined, even dogged, in their efforts to achieve this. While such efforts are laudable, it is important that such an individual uses the Act in support of these efforts in a sensible and responsible manner. It is important to distinguish between a determined yet sensible use of information rights legislation and a request which could be deemed obsessive and unlikely to yield a productive result.
77. The Commissioner has published a "Charter for responsible freedom of information requests"
http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/its_public_information_foi%20charter_final.pdf.
78. This charter asks a series of themed questions to assist individuals in making requests. This includes the following:

"Does the request relate to a complaint on a previous grievance that has been deemed closed and fully investigated by due process?"
Will a request serve any purpose when it has been demonstrated by due process that no wrong doing took place?"
79. In this case, the complainant appears to be continuing to pursue his concerns about the individuals concerned because he is unsatisfied with the outcome of his complaints about them. He remains convinced as to their unsuitability and appears determined to find out as much information as he can about them in order to prove that his opinion of

them is justified.

80. During his investigation of the 2006 decision, the complainant was unable to provide to the Commissioner any evidence to show that individuals other than him had made bullying complaints against the three teachers. He also failed to do so with his complaint in this case. In the apparent absence of primary evidence of the teachers' bullying pupils, parts 2d) and 2e) of his request were, in the Commissioner's view, made with the purpose of finding other ammunition to use against the teachers in question in support of a reactivated complaint or in support of a complaint to other bodies. The Commissioner does not consider that this constitutes a responsible use of information access rights and agrees with the public authority that parts 2d) and 2e) of his request can fairly and reasonably be characterised as obsessive.
81. The Commissioner believes that the complainant is entitled to pursue his continuing concerns about the suitability of teachers and members of the school's governing body. These concerns relate to the very important matter of his children's education and it is extremely regrettable that his concerns have not been assuaged by the local complaints resolution process. The Commissioner has identified further avenues for raising concerns beyond local authority level and would suggest that the complainant considers applying to them, given that the local complaints resolution process has been exhausted. These are set out in a paragraphs 83 to 85 below. The Commissioner would be disappointed if the public authority or its agent has not already drawn these further avenues to the complainant's attention.

Do parts 2d and 2e of the request have serious purpose or value?

82. The Commissioner does not dispute the seriousness of the complainant's overall purpose, i.e., he wishes to achieve a satisfactory educational experience for his children. However, he is not persuaded that this request serves that purpose or adds value to his efforts. The Commissioner has reached this view having considered alternative complaint mechanisms which are available to the complainant.

Alternative complaint mechanisms

83. According to the website www.direct.gov.uk (which is a government website offering a portal to a range of public services), parents who wish to make a complaint about their children's schooling should follow a four tier complaint mechanism. Firstly, you should contact the teacher or head teacher at the school. If you are not satisfied with the outcome you should contact the governing body of the school. Beyond that you should contact the local authority. Finally, and the website describes this as a last resort, you should set out your concerns to the Secretary of State for Children, Schools and Families. The website also sets out how parents can also complain to The Office for Standards in Education, Children's Services and Skills ("Ofsted") about, among other

issues, concerns that pupils' personal development and well-being are being neglected.

http://www.direct.gov.uk/en/Parents/Schoolslearninganddevelopment/YourChildsWelfareAtSchool/DG_4016106

84. The Commissioner also notes that the General Teaching Council (which, among other responsibilities, maintains a register of teachers) will, in certain circumstances, consider complaints directly from parents particularly where the complaint "*is capable of amounting to an allegation of unacceptable professional conduct which could affect the teacher's registration*". It also notes that ordinarily, it would expect parents to seek local resolution first. It also comments that complaints relating to child safety and welfare would be referred to the Department for Education and Skills (now the Department for Children, Schools and Families ("DCSF"))

"Complaining to the General Teaching Council" September 2006

<http://www.gtce.org.uk/shared/contentlibs/92511/92601/complain.pdf>

85. The Commissioner is satisfied that the complainant has been through the first three tiers of the complaint mechanism recommended by www.direct.gov.uk. He appears to remain in dispute with the local authority about his children's educational experience, he remains unhappy about the conduct and suitability of three teachers at their school and he is unhappy about the governing body of the school. As the Commissioner has found, he has a number of options to take the matter forward beyond local authority level. The Commissioner is therefore unable to see what useful purpose is served by reactivating the local complaints procedure. He cannot, therefore, identify any serious value in the request.
86. If the complainant has already explored these further avenues and is unhappy with the outcome of any complaints he has made via those routes, the Commissioner is also unable to see what useful purpose is served by reactivating the local complaints procedure. Similarly, he cannot, therefore, identify any serious value in the request.

Section 14 (1) – Conclusion

87. The Commissioner is satisfied that the public authority has correctly applied Section 14(1) in relation to parts 2d) and 2e) of the complainant. Considering all the factors set out in paragraph 64 above, the Commissioner has given particular weight to three of them.
- The Commissioner is satisfied that, in the circumstances of this case, responding to those two parts of the complainant's request would place significant burden upon the public authority although he would have given greater weight to this point had the public authority been able to provide more detail as to the chronology of its dealings with the complainant.

- The Commissioner also finds that these two parts of the request can reasonably be considered obsessive because the complainant has been unable to provide any evidence in support of the individuals' alleged unsuitability other than his own opinion. The complainant was invited to provide this evidence during the Commissioner's investigation of his earlier complaint and he failed to do so. He had no additional evidence to provide in this regard with his complaint in this case.
- The Commissioner also believes that no serious value can be ascribed to parts 2d) and 2e) of the request because they serve no useful purpose. It is evident that the complainant is seeking to reactivate a complaints mechanism that he has already exhausted. He has other options for pursuing his concerns which he may or may not have already applied to. If he has not applied to them, he should now do so. If he has applied to them and has not achieved a result which satisfies him, the Commissioner sees no useful purpose in restarting the process from the beginning.

The Commissioner believes that parts 2d) and 2e) of the requests (which imply otherwise unsubstantiated allegations of criminality) could also be construed as harassing the individuals concerned. However, in the absence of any further evidence such as personal statements from those individuals he has not given this point additional weight in his deliberations.

88. The Commissioner would note that his findings in relation to parts 2d) and 2e) of this request do not mean that every future information request made by the complainant can automatically be deemed vexatious. However, the Commissioner will be including a copy of his Charter for Responsible Requests (referred to at paragraph 76) with a copy of this Notice to assist the complainant in using his rights under this Act responsibly in the future.

The Decision

89. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- It was entitled to apply Section 14(1) and Section 14(2) in relation to its duty under Section 1(1).

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It failed to respond to the complainant within 20 working days as required by Section 17(5) of the Act.

Steps Required

90. The Commissioner requires no steps to be taken.

Right of Appeal

91. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 15th day of December 2008

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1 - General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Section 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.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Section 17(5) – Reliance on Section 14 (Time for compliance)

- 5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.