

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2012

Public Authority: The Governing Body of Upshire Primary School
Address: Upshire Road
Waltham Abbey
EN9 3PX

Decision (including any steps ordered)

1. The complainant requested minutes for any meetings in which the Final Audit Report of Upshire Primary Foundation School ('the school') 2011/12 was discussed. The school refused to comply with the request as it viewed the request to be vexatious. The school cited section 14(1) of the Freedom of Information Act (FOIA) as its grounds for refusal.
2. The Commissioner's decision is the school has correctly applied section 14(1) of the FOIA and that the request is vexatious.
3. The Commissioner does not require the public authority to take any steps in this matter.

Request and response

4. On 22 March 2012, the complainant wrote to the school and requested information in the following terms:

"Please send me the minutes of all the meetings where the Final Internal Audit Report 2011/12 – Upshire Primary School (SCF248) was discussed. This should include agendas and a list of those present."

5. The school responded on 30 March 2012. It issued a refusal notice in which it informed the complainant that it regarded his request as vexatious and would not be responding to any further correspondence on this issue from him.

6. The school therefore did not conduct an internal review upon receipt of a request for one from the complainant dated 30 March 2012.

Scope of the case

7. The complainant contacted the Commissioner on 22 March 2012 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of this case is to examine the school's application of section 14(1) of FOIA to the complainant's request and to determine whether the school has, or has not, correctly refused the request as vexatious.

Reasons for decision

9. The Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether the school can refuse to comply with the request on the grounds that it is vexatious.

10. Section 14(1) provides the following:

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

Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following links:

http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/refusing_a_request.aspx

<http://www.ico.gov.uk/foikb/FOIPolicySectionsRegs.htm>

11. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:

- 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; and
- whether the request has any serious purpose or value.

Whether compliance with the request would create a significant burden in terms of expense and distraction

12. The school has argued that this request is substantively similar to previous FOI requests made by the complainant to the school.
13. The complainant submitted 16 requests for information to the school between 31 January and 10 August 2011. The school has explained that these requests included repeat requests and requests which were sent to more than one person over five days. During this time the complainant also contacted the school asking for internal reviews and regarding various issues about his requests (for example, to explain how FOIA worked and what qualified as a request). The school responded to some of these requests but refused to respond to seven of them on the grounds that it viewed them to be vexatious, citing section 14(1) of FOIA. The complainant complained about these refusals.
14. These seven complaints are covered in case reference FS50408845. The Commissioner did not uphold any of these complaints as he found that in all these cases the school had correctly applied section 14(1) and that they are vexatious requests. The Commissioner noted in the decision notice (case reference FS50408845) that these complaints are about the same issue.
15. The school has argued that this request is substantively similar to these past requests. These past requests included requests for information relating to a building project in Upshire pre-school ('the pre-school'). They also included requests for information relating to financial transactions occurring within the school and the pre-school, in particular those connected to the building project in the pre-school.
16. The school has explained that the "Final Audit Report" referred to in this request is an Audit Report, conducted by Essex County Council, of the school's financial affairs. The school expanded on this by explaining its position further:

"It is apparent to the school from the contact received, that (the complainant) wishes to prove that the Governing Body acted fraudulently when undertaking building works in August 2010. At his request an internal review into the project was undertaken by the Governors and in addition to this, during a routine audit by Essex County Council, the transaction was given a clean bill of health. Subsequently (the complainant) complained to Essex County Council

alleging financial wrongdoing by the school, who then carried out a full internal audit of the school's finances. (The complainant) has a copy of the final audit report which he requested under FOI from Essex County Council. It is this report to which he refers in his request of 22/03/12."

17. Since these seven cases have been closed by the Commissioner, the complainant has made two more requests for information to the school. The first, dated 22 March 2012, is the case here at hand. The second, dated 28 March 2012 has also been refused as vexatious by the school, and is being dealt with by the Commissioner as a separate case (case reference number FS50462814).
18. Given the substantive similarities in the contents of these requests, the Commissioner will take into account the expense and distraction caused by all of these requests when evaluating whether this request has caused significant burden in terms of expense and distraction. Given the arguments laid out in paragraph 16, the Commissioner is satisfied that this request is significantly similar to these past requests.
19. The school provided a log of all activities, meetings and communications which have occurred as a result of the complainant's requests.
20. This log shows that an unreasonable amount of staff time has been spent dealing with the complainant's requests.
21. The school explained that the school is only a small school with a limited number of staff and amount of resources. It explained that the complainants numerous communications and requests have been taking up a great deal of staff time, to the extent that the school has been obliged to pay 29 hours overtime to one member of staff alone as a result of these requests. The school also explained that a member of the Board of Governors who has been involved in dealing with the complainants requests has also been paid overtime as a result. Furthermore the school has confirmed that this has taken the member away from her other job and has impinged on her personal life. The school further explained that the money spent on the overtime would ordinarily have been spent on the children of the school, and that notwithstanding this, the distraction caused by dealing with these requests is taking members of staff away from performing their usual duties within their normal hours.
22. In the decision notice for case reference number FS50408845, the Commissioner noted that the school communicated to the ICO that after receiving information from the school the complainant goes on to ask questions about that information. The Commissioner is therefore satisfied that if the school were to respond to this request, this response would likely engender further requests for information.

23. In light of the above arguments, the Commissioner is satisfied that answering the request would produce a further significant burden on the school as it is likely to be followed by further requests of a similar nature.
24. It is therefore the Commissioner's view that the request does meet this criterion of a vexatious request.

Whether the request is designed to cause disruption or annoyance

25. The school has stated that it believes the complainant, through these numerous related requests, is endeavouring to prove that the Governing Body acted fraudulently when undertaking building works in August 2010.
26. The complainant states that he believes the school holds incriminating or at least embarrassing information which it is endeavouring to cover up by refusing to respond to requests for information.
27. Whilst the Commissioner is satisfied that the request is causing disruption and annoyance to the school, the Commissioner is not satisfied that the request is designed to cause disruption or annoyance.
28. It is therefore the Commissioner's view that the request does not meet this criterion of a vexatious request.

Whether the request has the effect of harassing the public authority or its staff

29. The school has argued that the complainant's requests are causing disruption and annoyance. In a letter to the Commissioner dated 17 November 2012 the school explained that the complainant has made numerous related "requests, threats and accusations" to the school since February 2011. The school further explained that often the complainant sends copies of the same e-mail to more than one member of staff.
30. The Commissioner further notes that no reasonable time has elapsed between the date of this request (22 March 2012) and the decision notices from the last of the linked cases being served (three of the seven cases discussed above were closed 13 March 2012).
31. The school also argued that the complainant has been personally harassing the staff of the school in matters related to this request. In an e-mail dated 17 October 2012 the school explained that:

"Prior to the email request of 22/03/12 from (the complainant), he stopped a parent governor of the school, in the street and asked for details of a recent Full Governing Body meeting. Due to the previous history of contact from (the complainant) this interaction was reported to the police as the Governors felt that this was wholly inappropriate. The Police visited (the complainant) and asked that he refrain from stopping staff and governors in the street to discuss school business."

32. It is the Commissioner's view that the incident described above is substantially related to this information request, in that the complainant was discussing a similar subject matter with the parent governor he stopped in the street to that of this request.
33. It is therefore the Commissioner's view that this request has the effect of harassing the school and its staff. The Commissioner is satisfied that the request meets this criterion of a vexatious request.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

34. When a request for information is refused as vexatious or manifestly unreasonable, it is often the case that there is a difficult relationship between the parties which has arisen as a result of an original dispute.
35. The school argued that the complainant's requests could be seen as obsessive due to the volume and frequency of contact with it. The school provided the Commissioner with a record of the communication the complainant had with it between January 2011 to October 2012.
36. The Commissioner previously noted, in relation to the past related cases, that the complainant made a request on 30 March 2011 in relation to which the school issued a refusal notice on 19 May 2011. From 30 March 2011 until 10 August 2011 the complainant submitted ten further requests. These included repeat requests and sending one request to four different people via email over six days and sending the same request via Royal Mail. The complainant also sent additional emails saying that for example he was unhappy with the tone of an email from the school.
37. The Commissioner notes that no reasonable time has elapsed since the most recent decision notice was served on these related cases and the complainant making this request. To clarify, the last of the previous cases was closed on 13 March 2012, and this request was made on 22 March 2012.
38. The school has argued that the complainant has made these requests in pursuit of uncovering financial wrong-doing at the school. The Commissioner notes that in the school's log of communications, the

complainant has expressed his dissatisfaction that his previous complaints have not been upheld as it is the complainant's view that he is whistle-blowing.

39. The complainant has told the Commissioner that he believes criminal activity or at least wrongdoing has occurred at the school. The complainant alleges that fraudulent practices are being covered up by the school. In his e-mail to the ICO dated 16 October 2012 the complainant states:

*"I only wish to voice my concern that the school has tried everything, including **"vexatious exemptions"**, to withhold certain information that may be incriminating or merely embarrassing. I am worried that they use this tactic so nobody can hold them to account or question their decisions."*

40. The Commissioner finds that the complainant's request is characterised as obsessive, and is therefore satisfied that the request meets this criterion of a vexatious request.

Whether the request has any serious purpose or value.

41. The school has argued that the complainant's requests are made with the intention to cause disruption and annoyance and that they lack serious purpose or value.
42. The school has explained that Essex County Council's Internal Control Evaluator's report has given the school's finances a clean bill of health and that the complainant has a copy of this report. The school therefore argues that if the complainant wishes to prove poor financial management at the school, this is of no serious purpose or value, given that poor financial management has been disproven.
43. The complainant has argued that he believes that poor financial management or fraud has occurred at the school. The complainant has stated that he believes the school is covering this up. Therefore the Commissioner accepts that the complainant has a serious purpose in making these requests.
44. The Commissioner is therefore not satisfied that the complaint lacks any serious purpose or value, and is therefore not satisfied that the request meets this criterion of a vexatious request.

Summary of five factors

45. The Commissioner is satisfied that the request meets some, but not all, of the five factors outlines above. Specifically, the Commissioner finds that the request meets the first, third, and fourth criteria of a vexatious

request, but does not meet the second or the fifth criteria of a vexatious request.

46. The Commissioner notes that this request does not meet the fifth criteria. When balancing these five criteria, in some cases where the request does have serious purpose or value, this can be enough to prevent it from being vexatious. The Commissioner recognises that in some cases where a request meets some or all of the other four criteria, the serious purpose and value of the request can outweigh them. However, in this case, the Commissioner finds that the serious purpose and value of this request does not outweigh these other factors. It is the Commissioner's view that the purpose of the request is to uncover financial wrongdoing at the school. Whilst the Commissioner recognises that in principle this is a serious purpose and value for a request to have, in this case there is sufficient information showing no financial wrongdoing has occurred. The Commissioner further notes that the complainant is privy to this evidence, through other requests for information that he has made. The Commissioner therefore finds that the serious purpose or value of this request is not sufficient to outweigh the other factors.
47. In light of the five factors outlined above, the Commissioner finds that overall the request is vexatious, and therefore section 14(1) has been correctly engaged in this case.

Right of appeal

48. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF