

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 May 2013

**Public Authority:** Hunter's Bar Junior School  
**Address:** Sharrow Vale Road  
Sheffield  
S11 8ZG

#### **Decision (including any steps ordered)**

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1. The complainant submitted a complaint to Hunter's Bar Junior School (the "school") about its provision of special educational needs ("SEN") support to his daughter. Under the Data Protection Act 1998 (the "DPA") and the FOIA, he then requested information used in the consideration of this complaint. He also requested any public information the school held concerning the involvement of a solicitor's firm in handling his complaints since 2007. The school refused the FOIA part of the request as vexatious under section 14(1).
2. The Commissioner's decision is that the school has correctly applied section 14(1) to that part of the request which fell under the FOIA. There are no further steps to be taken.

#### **Background**

3. The complainant's daughter attended the school between 2007 and 2011. The school has explained that during this time it became concerned about her father's behaviour at parents' evenings and meetings held to discuss her progress. This prompted the school to ask the Legal Services Department of Sheffield City Council (the "council") to write to the complainant on its behalf. This letter (sent in July 2010) asked that the complainant should not enter the school premises unless he had arranged an appointment with the Head Teacher or one of the Head Teacher's representatives.

4. On 1 October 2010 the council's Legal Services Department again wrote to the complainant and explained the background to the concerns the school had about his behaviour.
5. It explained that the school offers parents two formally arranged appointments on parents' evenings in October and March. For parents of children with SEN there is an additional meeting to review the child's Individual Education Plan ("IEP") as well as SEN drop-ins throughout the year. It explained that complainant had been staying in school significantly longer than the allocated time for these meetings and that other arranged meetings had taken place.
6. The complainant complained to a local Councillor (who has experience in SEN) about the letter sent to him by the council's Legal Services.
7. The Councillor wrote to the school (30 November 2010) and raised the issue of the involvement of Legal Services in this matter. The points raised were addressed by Legal Services in a letter to the Councillor dated 2 December 2010. No further action was taken with regard to this issue.
8. A second Councillor (the Cabinet Member for Children and Young People's Services) became involved and meetings were held to discuss the issues raised by the complainant. These meetings identified areas for improvement in the delivery and conformance to the Government SEN Code of Practice at the school.
9. This Cabinet Member wrote to the complainant on 18 January 2011 and informed him that the council does not have the power to intervene in all aspects of the running of a school. However he confirmed that the issue of the quality of the IEPs had been raised with the school.
10. In February 2011 the complainant complained to the Director of Legal Services at the council about the school's use of its Legal Services. Other than the delay in responding to him, the complaint was not upheld.
11. In July 2011 the complainant submitted his complaint to the council about persistent failings in SEN provision at the school. Meetings were held in Autumn 2011 with senior council officers. The complainant has argued that the failings were acknowledged and that he was advised to complain directly to the school to engage and exhaust the school's formal complaints procedure.

12. The complainant complained to the Local Government Ombudsman (the "LGO") in 2011. On 29 September 2011 the LGO wrote to him and acknowledged that he had been unable to hold the school to account.
13. However the LGO informed the complainant that it had not concluded this was because of fault on the part of the school or the council. It also informed him that it considered the school's offer of a meeting every three weeks in addition to parents' evenings was a reasonable way to meet his concerns. It explained that it considered that the school was entitled to manage his contact with staff but that it would not investigate the letters written by the Council's Legal Services on behalf of the school. The LGO considered the matter closed.
14. Following advice from the council officer, the complainant complained to the Governing Body of the school in October 2011. He resigned his position on the school governing body and on 21 October 2011 wrote to the school with the following complaints:
  - Special Educational Needs support to his daughter had been ineffective and largely unaccountable.
  - The Governing Body had not acted in the best interests of children.
15. He asked the school to provide him with the process it intended to follow in response to these complaints.
16. On 3 November 2011 the school informed the complainant that his concerns had been noted. However he remained concerned that it took no further action following his complaint and his DPA/FOIA request was therefore submitted.
17. In 2012, the complainant wrote to the School Governance Unit at the Department for Education (the "DfE"). On 2 October 2012 the DfE's School Governance Unit wrote to the school and the council's Legal Services responded on 15 October 2012. The DfE has not taken the matter further.
18. The complainant has argued that the councillors, the LGO and the DfE have not fully investigated his complaints about SEN provision at the school and that they have all been unable to hold the school to account for its failings. He considers that no significant changes have been made to SEN provision and that the school is still failing in its SEN support. He has explained that senior council officers have acknowledged that the school has not been brought to account.

## Request and response

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### Request 1

19. On 15 February 2012 the complainant wrote to the school and requested information in the following terms:

*"I am writing to formally request under the Data Protection Act 1998 and the Freedom of Information Act 2000 to be given access to all information and records held, produced, transposed into file format, or in any other information or data system on the above by Hunter's Bar Junior School, its personnel or agents acting with or on behalf of Hunter's Bar Junior School which were given to or requested by:*

[name redacted] *Headteacher*

[name redacted] *Chair of Governors*

[name redacted] *Vice Chair of Governors*

*to inform their review of my concerns and judgement as per the failure to respond to complaints submitted by me by email in October 2011.*

*I understand that we as parents of [name redacted] and as persons in our own right have the rights of access to all and every record and item of information that makes reference to and about our daughter and ourselves."*

### Request 2

20. On 28 February 2012 the complainant wrote to the school again and requested:

*"...public information and private data to cover the involvement of [Solicitor's name redacted] with Hunter's Bar Junior School, its personnel or agents acting with or on behalf of Hunter's Bar Junior School since September 2007."*

21. The school responded on 16 March 2012. It stated that it considered the request to be vexatious.

## Scope of the case

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22. The complainant contacted the Commissioner on 6 July 2012 to complain about the way his request for information had been handled.
23. The school's response to that part of these requests which falls under the DPA was considered as part of case reference RFA0476235 by the Commissioner.
24. The complainant had previously requested his personal data and that of his daughter in October 2010 and his concerns over the school's response to that request were considered by the Commissioner under case reference RFA0449804.
25. The scope of this case is not concerned with any further personal data the complainant considers is held by the school but is only concerned with its application of section 14(1) to that part of the request which falls under the FOIA. The complainant has been informed of this.
26. The Commissioner has therefore considered whether the school's application of section 14(1) to that part of the request which falls under the FOIA is correct.

## Reasons for decision

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27. Section 14(1) provides that a public authority is not obliged to comply with a request if it is vexatious.
28. The Commissioner's published guidance<sup>1</sup> on section 14(1) (which was the current guidance at the time of the request) provides that the following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious:
  - whether compliance would create a significant burden in terms of expense and distraction;
  - whether the request is designed to cause disruption or annoyance;

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<sup>1</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf)

- 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.
29. The guidance stated that it is not necessary for all five factors to be engaged, but explained that the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
30. The Commissioner has recently issued new guidance<sup>2</sup> on the application of section 14(1) and this adopts a less prescriptive approach. It refers to a recent Upper Tribunal decision<sup>3</sup> which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
31. The new guidance therefore suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
32. The school has submitted its arguments to the Commissioner with reference to the five headings as outlined in the old guidance. However the Commissioner has considered the arguments put forward by the school and by the complainant in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. Where relevant, he has taken into account wider factors such as the background and history of the request.

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<sup>2</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

<sup>3</sup> *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

**Detrimental impact: workload, irritation and distress**

33. The school considers that the volume of correspondence it has received from the complainant supports its argument that this request is vexatious. It has argued that complying with the request would incur unnecessary expense and represent an unjustified distraction from its ordinary business.
34. Having considered the amount of correspondence from the complainant to the school since 2007, the Commissioner appreciates that the school considers the complainant's correspondence has become a burden in terms of expense and distraction.
35. However, although the school may have spent a significant amount of time considering the correspondence and complaints over the years, the Commissioner is not satisfied that the volume of correspondence and requests constitutes a significant burden in terms of the FOIA. The request itself would not have a detrimental impact in terms of workload and in addition, the summary of the correspondence over the previous five years does not demonstrate a huge volume: it only includes two DPA requests and the current FOIA requests:
- |      |   |   |
|------|---|---|
| 2007 | - | 3 pieces of correspondence                              |
| 2008 | - | 6   |
| 2009 | - | 1   |
| 2010 | - | 3   |
| 2011 | - | 4   |
| 2012 | - | 4 (including the two requests under consideration here) |
36. For this reason, the Commissioner does not consider that compliance with this request would have a detrimental impact upon the school in terms of workload. However, he has gone on to consider whether compliance would cause an unjustified level of irritation to the school.
37. The school has argued that the complainant is already in possession of the information he has requested, and that his true purpose is to argue rather than seek information.
38. As noted above, the Commissioner has provided his DPA assessments which consider whether it is likely the school has provided the complainant with the relevant personal data requested, and this DPA response is not part of this case.

39. However, the Commissioner is aware from his investigation of case reference RFA0476235 that the question of the school's involvement with the solicitors named in this request has been addressed with the complainant.
40. From his involvement in case reference RFA0476235, the Commissioner is also aware that the complainant has been informed that the minute from the relevant Full Governor's meeting is all that was recorded concerning his complaint made in October 2011 and that no written submissions were made to or by any member of the Governing Body with reference to it.
41. However, the complainant has been informed by the council that he should take his concerns about SEN provision to the Governing Body of the school. The complainant has argued that was the school's failure to address his concerns which prompted this current request. The complainant has argued that the school must be brought to account for its failings in SEN provision.
42. Although the Commissioner is satisfied that as far as the complainant is concerned, the request has a serious purpose and is not designed to simply cause disruption or annoyance, he is aware that the school would appear to have answered the substantive part of his request under the DPA.
43. For this reason the Commissioner is satisfied that responding to the request is likely to cause an unjustified level of irritation to the school.
44. This is supported by the school's arguments that the tone of the complainant's emails and the negative personal comments he has made are tantamount to harassment.
45. On 21 October 2011 the complainant described the Head Teacher as "*institutionally aggressive*" and accused her of attempting to "*vilify and harass parents*". He accused the Governing Body of adopting a "*weak and ineffective approach*" and argued it had not acted in the best interests of children.
46. On 15 February 2012 he accused the Head Teacher, Chair of Governors and Vice Chair of Governors of undertaking a sustained campaign of "*hindrance, harassment and intimidation*" of parents to suppress criticism and opportunities for improvement at the school.
47. On 28 February 2012 he argued that he is seeking accountability for "*failures in the delivery of public service*".



48. Whilst the Commissioner understands the complainant is frustrated by what he considers to be the school's lack of accountability and its refusal to address the issues he has raised, he is satisfied that the request will have the effect of harassing the school. The accusations the complainant is making against the Head Teacher and Governing Body are serious and would undoubtedly be upsetting.
49. The Commissioner is therefore satisfied that responding to this request is likely to cause a disproportionate level of distress.

### **Background and history to this request**

50. The school has argued that the high volume and frequency of the complainant's correspondence demonstrates his request is part of a pattern of behaviour and appears to form part of a campaign to put pressure on the Governing Body. It has argued that any responses lead to further correspondence, requests and complaints.
51. The school considers that the extensive correspondence demonstrates obsessive and unreasonable behaviour. It considers that the requests show a clear intention to reopen issues that have already been considered.
52. It is apparent that since 2010 the complainant's correspondence with the school has been concerned with his dissatisfaction with the school's provision for his daughter's special educational needs and its treatment of him.
53. The complainant does not consider he is re-opening a subject which has already been considered. He does not consider that the issue of poor SEN provision at the school has been addressed by any of the bodies which have considered his complaints or by the school itself. He has been told that the correct procedure is to raise this issue directly with the school and it would appear that he believes he is moving his complaint forward by making his FOIA request to the school.
54. The Commissioner does not consider that the volume of correspondence indicates an obsessive pattern of behaviour. However, having considered the details of this case, he is satisfied that the requests of 15 February and 28 February 2012 represent an attempt on behalf of the complainant to compel the school to consider his SEN complaint and to bring the school to account.
55. The complainant has already been informed under the DPA that he has all the requested personal data held by the school and that no further personal data exists which relates to the consideration of his complaint made in October.

56. The Commissioner is therefore satisfied that the request has become another means to reopen the complaint concerning SEN provision at the school and that this is an improper use of the FOIA.

**Serious purpose or value**

57. The school has argued that the complainant's concerns have been considered by the Director of Legal Services at the council, by the LGO, by local councillors and by the Department for Education. None of these bodies found there was a matter for further investigation.
58. The complainant has argued that none of the above considered the SEN failings of the school and that the school remains unaccountable for its SEN provision. He has argued that this has been acknowledged by senior council officers. He has argued that the school has an obligation to deal with his complaint (even though his daughter no longer attends) and has failed to do so. He has informed the Commissioner that with the help and support of local councillors, he is continuing to pursue his complaint with the council, the DfE and his Member of Parliament.
59. The Commissioner appreciates that the question of SEN provision at the school is a serious issue and that the complainant considers his related FOIA request to be equally serious. However, the Commissioner is satisfied that the current FOIA request serves no useful purpose. The complainant has a copy of all the relevant personal data held by the school under the DPA. The school's complaints policy is publically available on its website.
60. The Commissioner is therefore satisfied that the pursuit of this FOIA request serves no serious purpose and has no value for the wider public interest.

**Conclusion**

61. It is apparent that the complainant's correspondence with the school is motivated by his belief that it failed to support his daughter's special educational needs and his argument that it has not responded to criticism or complaints. He has argued that there have been failings in teaching, administration, procedures and engagement with parents.
62. The information requests of 15 February 2012 and 28 February 2012 clearly illustrate that the complainant believes the school has not been held to account for the above failings. It is for these reasons that he submitted the request under the DPA and the FOIA.
63. With respect to that part of his request which falls under the FOIA, the Commissioner is satisfied that the complainant is using the FOIA to means to reopen his complaint concerning SEN provision at the school.

64. The Commissioner considers this to be an improper use of the FOIA and is satisfied that the request serves no useful purpose. He considers the request is likely to cause an unjustified level of irritation and a disproportionate amount of distress and has no wider public interest.
65. The Commissioner therefore considers that the school was correct to apply section 14(1) of the FOIA to that part of this request which falls under the FOIA.

## Right of Appeal

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66. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

67. 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.
68. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**