

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2013

Public Authority: Bexhill High School and International
Community Technology College

Address:
Gunters Lane
Bexhill-on-Sea
East Sussex
TN39 4 BY

Decision (including any steps ordered)

1. The complainant requested from Bexhill High School and International Community Technology College (formerly Bexhill High School) details of its Special Educational Needs Budget. The school refused to comply with the request by relying on section 12(1) (appropriate limit). The Commissioner has considered the complaint and found that the costs of complying with the request exceed the appropriate limit when aggregated with the costs already incurred in complying with other requests from the complainant. The Commissioner has decided that section 12(1) applies and he requires no steps to be taken.

Request and response

2. The complainant has made a number of requests to Bexhill High School for details of its budget for the provision of special educational needs (SEN). The complainant made this first request on 7 October 2012 which read as follows:

I also require the budget allocated to Bexhill High School for SEN provision (from LA)

What was total SEN income and total SEN spend

What was SEN budget spent on specifically please? (teachers? therapy?)

3. In the same correspondence the complainant also made a number of further requests regarding the School's (SEN) provision, and the assistance provided to her child as well as other children. The full text of the request is attached at Appendix 1 along with an earlier request made by the complainant on 4 September 2012 which also related to the issue of SEN provision at the school.
4. The school responded on 15 October 2012. It provided some of the information requested but did not provide any information in relation to the SEN budget.
5. This led to a further exchange of correspondence with the School and the complainant making further requests for details of the Schools SEN budget. On 15 October 2012 the complainant requested information in the following terms:

"Following a request to [named individual] I have been told to contact you with regard to SEN BUDGET allocation for the last couple of years. I require expenditure and income figures with details of surplus or overspend please.

A format that is easy to read for all members of a panel at a tribunal would be appreciated.

Also are you aware of funding differences for SEN provision when you became an academy?

6. The complainant wrote to the school again on 24 October 2012 stating *"I have previously requested the detailed SEN BUDGET from your school and have been informed the request has been passed to your office"*.
7. On 7 November the complainant wrote to the school stating:

"Following previous requests for detailed information about Bexhill High School income and expenditure for SEN I have received some information from the SEN team. As the school manages their own budget it is the school that need to give the specific details requested. Legislation states that at no point do I have to mention the FOI act when requesting such information.

Pleas supply DETAILS OF ALL SEN INCOME AND EXPENDITURE for years 2009 - 2010, 2010-2011 and 2011-2012 (school years or financial years depending on what is used).

I require cost of ALL SEN SPEND including DEATILE information of ALL parts i.e. supply, therapy, software, hardware or specific SEN tools.

How the total SEN budget allocated to Bexhill High School from the

Authority should be explained. Finally please let me know if there was an overspend or surplus money”.

8. The school responded on 9 November 2012. It stated that the current request had been considered together with the complainant’s previous requests. The school was satisfied that they all relate to the same or similar issues and therefore should be aggregated. It stated that it was therefore refusing the request under section 12 of the FOIA – exceeds the appropriate limit. In essence this means that the school was treating all the requests as one whole request as they had been received within 60 days of each other.
9. Following an internal review the school wrote to the complainant on 27 November 2012. It maintained its application of section 12 and explained that the appropriate limit had been exceeded in responding to previous requests.

Scope of the case

10. The complainant contacted the Commissioner on 28 December 2013 to complain that the school had not complied with her requests for details of its SEN budget.
11. The Commissioner considers the scope of this case to be to determine if the school was entitled to refuse the requests for the SEN budget by relying on section 12 of FOIA.
12. Following correspondence with the Commissioner the school stated that it does not hold a ‘SEN Budget Report’. This was challenged by the complainant and the Commissioner contacted the school to clarify its position. It advised that although the information is held it is not contained within one report which could easily be provided. It therefore maintained its application of section 12.

Reasons for decision

13. Section 12 of FOIA provides that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit. The appropriate limit for public authorities outside of central government is set at £450.

14. The costs that a public authority may take into account when producing its estimate are set out in the Freedom of Information and Data Protection (Appropriate Limit and fees) Regulations 2004 or "the fees regulations".
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
16. A public authority should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour.
17. Under section 12 a public authority may also aggregate the costs of complying with two or more requests where requests relate to the same or similar information and where requests are made within a period of 60 consecutive working days. It is important to note that multiple requests for information within a single item of correspondence are separate requests for the purposes of section 12.
18. In this case the School maintains that the complainant's requests for details of the School's SEN budget would exceed the appropriate limit when aggregated with the costs already incurred when dealing with the complainant's other requests for details of the Schools SEN provision on 4 September 2012 and 7 October 2012 and subsequent requests.
19. In this case the requests all relate to the school's SEN provision. There is an overarching theme or common thread running between the requests and the Commissioner is satisfied that the requests are sufficiently similar that they may be aggregated for the purposes of section 12. The consequences of this are that section 12 can be applied where the School estimates that the combined costs of dealing with the complainant's requests would exceed £450 (or 18 hours).
20. The school has provided a breakdown of the costs it has already incurred in complying with the complainant's requests. As regards the complainant's request of 4 September 2012 it said that it had taken 4 hours to formulate the response. This involved "researching in staff development records and analysing the breakdown of teaching staff". Time was also spent speaking with colleagues at the school and at the local authority.

21. For the request of 7 October 2012 the School explained that it estimated it had taken 12 hours in locating, retrieving and extracting the requested information – apart from the request for the SEN budget which was not addressed in response to this request. Again, the School said that complying with this request involved:

"...extensive research of on-line and paper records, discussion with the year 11 intervention manager and other key colleagues including the exams officer who had new in post for the 2011 GCSE exam series. This was a particular challenge as all the information was not in one place for the students about whom [the complainant] requested information. In addition to this, the level of detail required for all the stated students for all exams taken meant that typing a coherent response to her request was extremely time consuming."

22. On 15 October 2012 the complainant contacted the school to request information which she felt was missing from the schools response to her 7 October request. This was in addition to a separate request she also made on 15 October 2012 which was directed to another area of the school and which again asked for the SEN budget and which is referred to at paragraph 8 above. The School said that responding to the request involved a further 2 hours work.
23. The complainant made further requests on 23 and 24 October 2012, which were again seeking clarification on the response to the earlier request. This involved 3 hours responding to the request.
24. The school has said that it estimated that in total it had spent 19 hours in complying with these requests that could be attributed to the activities listed in regulation 4(3).
25. The complainant made a further request on 7 November 2012 when she again requested details of the SEN budget. Although the complainant

had very clearly asked for this information in her previous requests it was only now that the School responded when it cited section 12.

26. The school has said that it would take at least 18 hours to comply with the requests regarding the budget for SEN provision. It did not provide a detailed breakdown of the costs involved because, it said, it had already exceeded the appropriate limit in providing answers to the previous requests. However it explained that the information is not held in a single report but instead would involve retrieving information from various cost centres.

27. The issue to be considered by the Commissioner is whether complying with the complainant's various requests for details of the SEN budget could be refused under section 12 when the costs are aggregated with the requests to which the school has already complied with.
28. First of all, the Commissioner would say that he considers that the school's estimate of the time it has already incurred in complying with the complainant's requests (for information other than the SEN budget) is reasonable. Only relevant costs were taken into account and the school has confirmed that the responses to the requests were made via the quickest method of gathering the information. The Commissioner notes that much of the requested information was not held together in one place and therefore it was not simply a case of extracting the information from a computer or electronic record. The complainant had asked a number of questions or asked for information which was specifically about her daughter and the costs of complying with these requests were not taken into account for the purposes of the cost estimate. This would suggest that the school has taken a proportionate approach and carefully considered what costs could be taken into account for the purposes of FOIA.
29. As regards the costs of complying with the requests for the SEN budget the School has said that it estimates that this would take up to 18 hours. The school has not provided a breakdown of the costs it would expect to incur in complying with these requests and therefore it is very difficult for the Commissioner to make a decision on whether the estimate is a reasonable one. The estimate may well be too high, although it would appear that these are requests that in all likelihood would be difficult to answer very quickly and the time involved would be not inconsiderable. The Commissioner is mindful that the information is not held in one place, and would have to be retrieved from a number of different sources. The complainant has asked for exact details of expenditure and in the case of the 15 October request asked for information for the last two financial years. For the 7 November request this was extended to cover the last 3 financial years.
30. In this case the question of whether the estimate of the time taken to comply with the requests for the SEN budget is reasonable is not crucial. This is because the school has estimated that it had already spent 19 hours complying with the complainant's other requests and the Commissioner is satisfied that the estimate is reasonable. The appropriate limit has already been exceeded and any costs incurred in complying with the requests for the SEN budget, whilst perhaps not 18 hours, would further exceed the appropriate limit.

31. Therefore, in each case where the complainant can be seen to have requested details of the SEN budget (7 October 2012, 15 October 2012, 24 October 2012 and 7 November 2012) the Commissioner has decided that the school was not obliged to comply with the request because the cost would exceed the appropriate limit when aggregated with the costs the school had already occurred in complying with the complainant's other request.

Right of appeal

32. 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

33. 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.
34. 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, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF**

Annex A

Request 04.09.12 – (using the school's numbering)

1. You state [complainant's child] would be assisted by a staff member with level 2 qualification in speech and languid. Can you clarify what is the name of this qualification, or are there only the one type for SALT? E.g. NVQ
2. What is the highest level possible attained? I have been informed Level 7 is required by staff if they need to assess students.
3. Does this staff member have experience of auditory Processing disorder?
4. When did this TA get their level 2 qualification and how long have they been working in the SALT role at Bexhill High?
5. Also please clarify why a teacher is being used for a TA role? It is unusual so please clarify (especially if it is for reasons relating to a complaint etc).
6. What were they teaching previously?
7. Does he or she ever work as a teacher if short staffed?
8. Is this teacher/TA likely to be used as a teacher if short staffed?
9. Please confirm that the teacher/TA used for day to day assistance of [the complainant's child] has NO extra qualification for SALT.
10. Would he/she actually be sitting with [the complainant's child] all the time for those 15 hours or so?
11. Do you have 3 teachers in a pod in a lesson? Or one teacher and TA's?
12. How many TA's in addition in each pod?
13. Please clarify all staff members used in pod for a standard lesson.
14. Would the person used to assist [the complainant's child] be doing other things in the POD also?
15. How many different staff members (TOTAL teacher and TA for all subjects across curriculum) would be involved in [the complainant's child]'s tuition as I presume they change per subject.

Request 07.10.12

They state that 30% of statemented children achieve 5 GCSEs including maths and English. On this point please answer:

1. What was the SEN type of these children? How many had SLCN as need (not associated with ASD please, primary need, not underlying)?
2. What did the other 70% get?
3. What subjects were the other 3 GCSEs in those 5? (Were they vocational).
4. Also what grades were these 5 GCSEs including maths and English?
5. How many Statemented children did not get Maths and English GCSE **passes** (level c and above) from the same year?
6. Do you do entry level exams (in English and Maths) for lower achieving pupils? Or only vocational?

And

I also require the budget allocated to Bexhill High School for SEN provision (from LA)

What was total SEN income and total SEN spend.

What was SEN budget spent on specifically please? (teachers? therapy?)

I now require an exact number of staff that will be included in [the complainant's child]'s teaching please. As the LA do not accept the argument for keeping staff member numbers down without explaining an amount.

You have previously stated 3 teachers in PODS and TAs (amount depending on need). Please let me know the amount of teachers/TA in total that [the complainant's child] would have if she was there now. There is a space for her so it must be known or could be counted exactly how many in total.

Please include ART and PE and assistants for those subjects also.

The LA have said that Social Skills takes place in AEN with children with good and bad social skills. How exactly is it social skills development with children with good social skills? How large are these groups?

Please confirm normal lesson length also.

Also total hours in normal week please.

Previously you stated that the 21 hours "support" would not be 1 to one in the POD as it would not help [the complainant's child] be an independent learner. I need to know where is the TA during lessons in a large POD? The explanation needs detail as I have asked previously how would the information be clarified or repeated back if TA is not with [the complainant's

child]? How would TA know if she hadn't understood if not with her? Please answer.

Finally I will be requesting the statement for [the complainant's child] is changed to reflect the amount of hours in the IEP you have provided. If they state 15 hours anything above is not legally enforceable.

At present the IEP contains 28 hours support, way above the amount on the statement but unfortunately IEP's are not enforceable in law.

With this in mind please confirm in writing that Bexhill High School is able to provide the whole 28 hours out of the allocated resources already provided to the school in the SEN Budget.

Lastly please confirm that Bexhill High is definitely becoming an academy after November 1st.