

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2014

Public Authority: The Governing Body of Parrs Wood High School

Address: Wilmslow Road
East Didsbury
Manchester
M20 5PG

Decision (including any steps ordered)

1. The complainant made 12 requests about a School Governor suspension and the Judicial Review in 2011. Parrs Wood High School (the School) refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the School has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Background

2. In December 2011, the Governing Body of the School was involved in legal action following the suspension of a Governor who, allegedly, passed on confidential information to a candidate ahead of an interview for the role of headteacher.
3. The Judge declared that "the decision to suspend him from office as a governor on 13th April 2011 was of no effect" as the governing body had only given 7 days' notice of the suspension meeting rather than 7 "clear" days. As a result, the governor was reinstated as a parent governor at the School.
4. Since then there have been a large number of FoIA requests concerning this legal action.

Request and response

5. On 27 September 2013 the complainant made a request under the FOIA via the whatdotheyknow website. The full correspondence can be found on this link:

https://www.whatdotheyknow.com/request/school_governor_suspensions#incoming-458135

'Can you please provide me with full information for the questions that follow under the FOI Act.

As I am aware that you seem pretty keen on the subject, I can provide proof of identity if required to assist you in this request in an acceptable way.

1. Can you please confirm whether a School Governor was suspended twice from your governing body in 2011 within a period of two weeks. If yes was that / were those suspension(s) deemed unlawful / and to have no effect by a high court judge some months later?

2. Your school was involved in a Judicial Review in 2011 - 2012 which they lost? Please give details of what that Judicial Review was for and any link to where the case can be found?

3. Please give details of the total cost of that Judicial Review?

4. As it is exceptionally rare for a public body to pursue a judicial review to the very end, can you please give details of why the school did this and whether that decision to do so was made by the whole of the governing body of the school?

5. Is it true that the initial context that led to the judicial review was simply about an anonimised (sic) letter sent to an applicant for a position in your school?

6. Was a school governor suspended from your school on the 4th June 2013 and was that same school governor re-instated on the 19th June 2013?

7. It has been rumoured that the governor allegedly suspended from the governing body on the 4th June and reinstated on the 19th June 2013 was suspended because they made a submission to a parliamentary select committee. Can you confirm if this is true? If this is not true can you please give the reason for their

suspension or not?

8. It has been rumoured that your governing body were warned by Parliament that you were in contempt of Parliament and that it was a criminal offence in bringing the threat of suspension to this governor which appears in any case to have occurred on the 4th April 2013. Is this true?

9. Can you confirm whether or not you received a communication from Parliament informing you that you were in contempt of Parliament and that if you did not lift the suspension of this governor, further action by Parliament would be taken against your governing body? If you did receive a communication from parliament can you please state the date on which you became aware of it?

10. Can you please provide copies of all communications between your School and Parliament on the matter of the June 2013 suspension of a governor?

11. Who are your legal advisors for guidance on the Freedom of Information Act and requests?

12. Please provide full details of your school governing body meetings on suspensions of governors. Please provide copies of your agendas and minutes of all meetings that discussed suspensions of governors' from January 2011 to today and please give the dates of all of these meetings? As this is a public website it would be best to post copies of these by pdf or similar please.'

6. After proof of identity had been provided, the School responded on 9 October 2013 with answers to the 12 questions.
7. On 26 October 2013 the complainant requested further clarification on questions 1,3,4,5,8,9,10,11 and 12. (See the Annex for the full details.) The School considered this clarification also contained new FOI requests.
8. On 24 November 2013 the complainant requested an internal review of the handling of the FOI request as there had been no response to the clarifications sought on 26 October 2013.
9. On the same day, the School requested proof of identity before responding to the further questions. There followed 6 pieces of correspondence on the request for an internal review and the request for proof of identity.
10. On 8 December 2013, the School stated that although it had answered the original request '*in the interests of transparency*', it believed the

request to be part of a campaign and cited section 14(1) of FOIA (Vexatious Request) to refuse the additional FOIA requests within the letter of 26 October 2013. An internal review was offered:

'If you are not satisfied with the School's decision that your New FoIA Request, and your request for an internal review of the School's response to your Original Request are both "vexatious", then you may ask for an internal review of the School's decision to refuse your New FoIA Request and your Original Request on the grounds of Section 14(1) of FoIA.'

11. On 27 December 2013, the complainant contacted the ICO but on 16 January 2014, was advised to first ask the public authority to reconsider its refusal of the request. The complainant contacted the School on 11 February 2014 to request an internal review of its decision in relation to the requests of 26 October 2013.
12. On 3 March 2014, the School carried out the internal review of the requests contained within the 26 October letter and upheld the use of section 14(1) on the grounds that the requests form part of a campaign and are vexatious.

Scope of the case

13. The Commissioner has examined the requests and related correspondence from both the complainant and the School. The Commissioner has considered the scope of the case to be whether the requests of 26 October 2013 are valid requests and whether the School is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

Section 8(1)(b) – Request for information

14. Section 8(1)(b) requires that a valid request for information 'states the name of the applicant'. The Commissioner's view is that this should be the real name of the applicant and that therefore requests using pseudonyms are not valid.
15. Where an applicant has used a name which is not obviously a pseudonym, then public authorities should normally assume that an applicant has used their real name. However, the Commissioner appreciates that there may be circumstances where the public authority

is suspicious that the name used is an assumed name even where the applicant has used a name which is not obviously a pseudonym. In such cases it is for the public authority to demonstrate why they reasonably believe an applicant has not used their real name.

16. In this case the complainant offered proof of identity to the public authority at the time of the original request and provided a copy of a birth certificate in the name of the complainant to the Commissioner at the time of the complaint.
17. The School has stated that it understands that the complainant may be related to a member of the school governing body but has provided no evidence to support this. The School is satisfied that '*redacted name*' is the real name of a person who has made the FOIA requests'.
18. The Commissioner has decided that a valid request for information has been made using 'the name of the applicant' in accordance with section 8(1)(b) of FOIA.

Section 14(1) Vexatious requests

19. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
20. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
21. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) any harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

¹ GIA/3037/2011

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

22. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
23. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
24. The School considered that the number of FOIA requests to the School regarding the historic Judicial Review that took place in 2011-12 forms part of a campaign and the impact of having *'to deal with these FOIA requests has already caused a disproportionate and unjustified level of disruption, irritation and distress to the School.'* The requests are of no serious purpose and value as they attempt to reopen an issue that has already been resolved.

The requests burden the authority/forms part of a campaign

25. The School stated that these FOIA requests follow a large number of requests from another requestor which also focused on the minutes of meetings in 2011 and the costs incurred by the School in relation to the Judicial Review.
26. The School provided a 91 page evidence log to the Commissioner which shows the FOIA requests from the other requestor to the School from

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http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

December 2012 to April 2013. These requests were often repeated (and sent to other public authorities) and include:

- Through the whole process of the Judicial Review did the governing body at any time discuss the costs or potential costs of the case and make decisions? If there were any discussions at any time, where have they appeared in the minutes of the school governing body?
 - If the costs have been borne by a SLA, please supply a copy of the SLA to me.
 - If the costs were covered by an SLA please obtain for me from Manchester City Council the complete breakdown of the costs?
 - If the costs were borne or even partly borne by the school were discussions in the FGB had about this in terms of Budget provision and again where will I find this in copies of the minutes?
 - What efforts have been made since January 3rd 2013 up until today's date to ascertain an answer to what the costs of involvement of the school are?
 - If the school is unable to ascertain the costs borne not by the school but by the LA for their part that they played in the JR, do you feel it worthwhile if I make a separate FOIA request to them or can the school obtain these detailed costs from the LA?
 - The school received a complaint about the potential inappropriate use of school funds in relation to the mediation to make a payment. Please provide full details of the complaint and a copy of the complaint.
 - Also can you tell me what the cost of the SLA was to Parrs Wood High School for legal's in the period 2011-2012 and what the SLA cost is for Parrs Wood for the period 2012-2013 and what it will be for 2013-2014?
 - Please supply to me hard signed copies of 10 sets of minutes from 2011 and 2012 including the confidential annexes for the Judicial Review updates
27. In addition, on 17 August 2013 there was an FOIA request from 'Harvey Scott' (the name of the local estate agent) to the School via the whatdotheyknow website on the subjects of the suspension of the School Governor, the Judicial Review and the costs. The complainant has stated that she was the author of this request.

28. In the past 2 years there has only been one other FOIA request to the School and this concerned an article in the School magazine. By comparison, there have been over 20 FOIA requests made by the 2 requestors to the School on the suspension of the School Governor.
29. The School is satisfied that there is '*good reason to believe*' that the FOIA requests from the complainant are linked to the previous requests and that the volume of requests seeks to re-open and re-examine the circumstances of the suspension of the governor.
30. When determining if the complainants can be seen as acting in concert for the purposes of determining if the request is vexatious, the Commissioner defers to his guidance on this. His guidance suggests that there must be some tangible evidence to substantiate the claim of a link between requests, for example that the requests are similar, the requesters copy each other into requests, the pattern of requests is unusual or frequent, or the group has a website which references a campaign against the public authority.
31. The Commissioner has considered this point very carefully as he is conscious of the fact that accepting that requesters are acting in concert will add much greater validity to the claim that the request in this case is vexatious. The Commissioner has seen that the requests from the complainant cover the same subject matter and the frequency of the requests form a pattern in that the requests are, with one exception, the only FOIA requests to the School.
32. The Commissioner has taken into account the context and background to the request and considers that this request is linked to the subject matter of the previous FOIA requests and taken as a whole could reasonably be described as a campaign and therefore a burden on the public authority.

Motive and value or serious purpose

33. The School considers that the complainant is partly attempting to find out information she believes she is entitled to but also that the requests are now partly intended to continue a debate on the Judicial Review.
34. The follow up questions of clarification from the complainant do not seek further information about the Judicial Review but ask the School to express a view. For example, the follow up clarification questions to the answers for the original questions 1 and 9 seek comments not information:
 - (i) '*can I now please ask you to reflect on your original answer as surely a high court judge cannot be incorrect? Can you further explain the Judge's comments...*'

(ii) *"Not" indicates that you did not receive a communication from Parliament...I am led to believe that you did receive a communication from Parliament...May I ask you to reflect on your original answer based on the above please?*

35. The Judicial Review, which took place in 2011-2012, considered the circumstances of the suspension (including the minutes of the Governor meetings) and the outcome has been published online. These questions attempt to reopen an issue that has already been resolved and are of no serious purpose and value.
36. The Commissioner accepts that the purpose of the requests may have gone beyond the point of simply obtaining information to understand the Judicial Review in that the follow up questions ask for the views of the School and are without merit or value to the public.

The requests are designed to cause disruption and have the effect of harassing the public authority

37. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
38. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
39. The School is concerned that the matter has been ongoing for 3 years and that a 'tipping point' has now been reached. Its dealings with the complainant and the other requester have imposed a significant burden which they anticipate will continue in the future. In addition, the complainant seems to be submitting requests to cause disruption to the School, rather than have a genuine need for the information to be disclosed in the public domain.
40. The Commissioner accepts that when considered in the context and history of the School's FOIA requests, the request imposes a burden in terms of time and resources, distracting the School from its main functions.

The Commissioner's decision

41. Having taken all the circumstances into account the Commissioner is minded to accept the request is vexatious when seen in the context of all of the previous correspondence with the public authority. The Commissioner recognises there is evidence to suggest the complainant is making requests in conjunction with another individual and that taken together the frequency and nature of the correspondence would be likely to be categorised as vexatious.
42. Taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that the School was correct to find the requests vexatious. He has balanced the purpose and value of the requests against the detrimental effect on the public authority and is satisfied that the requests have the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

43. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

44. 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.
45. 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

Annex – Further clarification and FOIA requests from 26 October 2013

For assistance I have copied the question and the answer that you gave (which I believe still needs more explanation) and my further response.

1. Can you please confirm whether a School Governor was suspended twice from your governing body in 2011 within a period of two weeks? If yes was that / were those suspension(s) deemed unlawful / and to have no effect by a high court judge some months later?

Your answer.

A School Governor was not suspended twice from the governing body in 2011 within a period of two weeks.

1. From your link given to the case on Ballii in particular paragraph 6, a governor was suspended on the 4th April 2011 from your school. Judge Pelling comments on Mrs A's notes as follows:-

"When all the interviews had been completed and the evidence from members had been considered, the Vice Chair of the Governing Body, Mr X, made the decision to suspend Mr Y from the Governing Body.

On this factual issue I conclude and proceed hereafter on the basis that what occurred at the end of the meeting on the 4th April 2011 was as described by Ms. A in her note".

This factual issue appears to be at odds with the school's evidence which the judge comments on.

One can therefore establish that one of your governors was suspended on the 4th April 2011 without any notification and unlawfully based on school governance legislation. That same governor was suspended again on the 13th April 2011 with Judge Pelling ruling;-

"In my judgment the Claimant is entitled to a declaration to the effect that the decision to suspend him from office as a governor on 13th April 2011 was of no effect". That suspension was again unlawful based on school governance legislation. The judgement states therefore that the same governor was unlawfully suspended on the 4th April 2011 and 13th April 2011.

You have clearly stated that 'A School Governor was not suspended twice from the governing body in 2011 within a period of two weeks'. As your answer appears at odds with what is stated by a high court judge can I now please ask you to reflect on your original answer as surely a high court judge cannot be incorrect?

Can you further explain the Judge's comments "However after much delay some minutes of the meeting kept by Mr X and by Ms A have been obtained and disclosed by the Defendant" Why were they withheld from the Governor, by whom and for how long as they appear to be pivotal evidence.

<http://www.bailii.org/ew/cases/EWHC/Admi...>

3. Please give details of the total cost of that Judicial Review?

Your answer.

No cost to the school.

3. My question was about the total cost of the judicial review with a view of the cost to public authorities. The public deserve to know that their money is being spent prudently. You have answered that there was 'no cost to the school'. As there must have been costs to someone can you please say who paid for the costs in this matter and are you aware of what those costs are and if you are can you please state what they were?

4. As it is exceptionally rare for a public body to pursue a judicial review to the very end, can you please give details of why the school did this and whether the decision to do so was made by the whole of the governing body of the school?

Your answer.

The Governing Body did not 'pursue a judicial review to the very end', it defended itself.

4. Please explain whether the governing body took the decision to pursue the Judicial Review to the end and what it was that the school were actually defending.

Costs in a Judicial Review can be very substantial and as my original question stated it is very unusual for a public body to go to the bitter end especially as the context appears to be simply

about an anonymous letter of which the governor at all times stated they were not the author. Would you comment on whether your school have wisely spent a considerable amount defending the Judicial Review?

5. Is it true that the initial context that led to the judicial review was simply about an anonymised letter sent to an applicant for a position in your school?

Your answer.
No.

5. From reading the case you have linked at bailii, it does indicate in the factual background from Judge Pelling that the context of the suspension was due to an anonymous letter. You have stated 'No' indicating that it was not. If that is the case can you please state what the initial context was of the suspension that then led to a judicial review?

8. It has been rumoured that your governing body were warned by Parliament that you were in contempt of Parliament and that it was a criminal offence in bringing the threat of suspension to this governor which appears in any case to have occurred on the 4th June 2013. Is this true?

Your Answer.
No.

8. The rumour is that you received a letter from the Education Committee indicating that you were in contempt of Parliament for threatening a governor with suspension and that any molestation or threats against those who have given evidence to a select committee would result in action being taken by Parliament against Parrs Wood. Can you please confirm if your answer still remains No - which would indicate to me that you did not receive any such communication from parliament? Please explain?

9. Can you confirm whether or not you received a communication from Parliament informing you that you were in contempt of Parliament and that if you did not lift the suspension of this governor, further action by Parliament would be taken against your governing body? If you did receive a communication from parliament can you please state the date on which you became aware of it?

Your Answer.
Not.

9. 'Not' is a fairly short and non descriptive answer. 'Not' indicates that you did not receive a communication from Parliament regarding your treatment and suspension of a governor on the 4th June 2013. I am led to believe that you did receive a communication from Parliament on the 4th June 2013 and despite this communication from Parliament your school still suspended the governor. May I ask you to reflect on your original answer based on the above please?

10. Can you please provide copies of all communications between your school and Parliament on the matter of the June 2013 suspension of a governor?

Your Answer.
None.

10. You have stated that there are no communications on this matter between Parliament and the school. I am led to believe that every member of your governing body including yourself did receive a communication from Parliament on the 4th June 2013. I believe also that your school communicated more than once further with Parliament immediately after the 4th June 2013.

You have stated 'None' which indicates to me that your school has not received any communications from Parliament or that you were not involved in any communications with Parliament. Can I please ask you to reflect on your answer and confirm again if this is true or not and if true can you please provide details/ copies here of all your communications with Parliament? Can you further explain why you reinstated this governor on the 19th June 2013?

11. Who are your legal advisors for guidance on the Freedom of Information Act and requests?

Your Answer.
Not obliged to release.

11. Please state which exemption you are using?

12. Please provide full details of your school governing body

meetings on suspensions of governors. Please provide copies of your agendas and minutes of all meetings that discussed suspensions of governors' from January 2011 to today and please give the dates of all of these meetings? As this is a public website it would be best to post copies of these by pdf or similar please.

Your Answer.

All ratified, non-confidential, minutes may be found via the school website www.parrswood.manchester.sch.uk

12. It is my understanding of FOI requests that where the information requested is available elsewhere, the requestor should be directed to it. For the answer to question 12 you directed me to your school website where I couldn't find anything. It felt like a bit of a wild goose chase. It was most disappointing. Further I very much doubt that all that I asked you in question 12 could be covered by exemptions.

I would therefore be grateful if you could supply as originally requested or give the appropriate exemptions for not supplying as requested?

From what I have gleamed, one of your governors has been suspended unlawfully three times from your governing body.