

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 May 2014

Public Authority: Reading School
Address: Erleigh Road
Reading
RG1 5LW

Decision (including any steps ordered)

1. The complainant made a request to Reading School (the School) for information broadly concerning the School's entrance tests.
2. The Commissioner's decision is that the School has correctly applied the vexatious provision at section 14(1) of the FOIA.
3. The Commissioner requires the School to take no steps.

Request and response

4. On 1 December 2013, the complainant wrote to the School and requested information in the following terms:

"1. When the school's process is followed correctly are the same mean and standard deviations calculated in October used to standardise the additional January test results or are these values recalculated to include data from the late test results as well?"

2. The wording of your 13/9 letter implies there was a mistake. Please could you explain the exact nature of the error which gave rise to two versions of these figures? (Alternatively confirm my original assumption that the October values are based on the main tests and 'once corrected' includes the late test results if this is the case.)

3. For absolute clarity please could you confirm which of the two slightly different sets of mean and standard deviations figures provided on 13/9 were the actual values used to generate results letters posted out to parents in October 2012?"

4. Please provide the mean and standard deviation values used to generate the results which were sent to parents in [(a)] October 2013 and [(b)] October 2011.

5. Please advise how many parents were sent results in late October 2012 in which any two standardised test results were exactly the same. (This is similar to, but NOT the same as a previous question.)

6. Please advise when the late test results will be taken this year."

5. The School responded on 9 January 2014. It provided the complainant with a response to requests 1, 2, 3, 4(b) 5 and 6. However, it withheld the information sought in request 4(a) under section 40(4).
6. Following an internal review the School wrote to the complainant on 29 January 2014. After reviewing its response to request 4(a), it considered that section 14 applied.

Scope of the case

7. The complainant contacted the Commissioner on 31 January 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the School was correct to apply section 14 to request 4(a).
9. The Commissioner has acknowledged all arguments advanced by both the School and the complainant, although not all are referred to in this notice.

Reasons for decision

10. Section 14 of FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
11. Guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)*¹ places emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

12. The Upper Tribunal's judgment proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of requests; and (iv) any harassment or distress caused. The judgment concurred with an earlier First-tier Tribunal decision in *Lee vs Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.
13. The judgment noted that the four broad issues are "*not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist*". It stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four broad issues, "*should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.*"
14. The Commissioner's guidance² on the application of section 14(1) indicates that the key question for a public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should take into account the background and history of the request where this is relevant.

Burden of requests and level of disruption, irritation or distress

15. The School explained to the Commissioner that:

"Although the burden of dealing with the particular request in this case is relatively minor in terms of the actual time it would take to provide the information, in the wider context of the number of requests and information already provided by the School, and the purpose and value of the request itself, the School believes that the balance falls in favour of the School withholding the information".

16. The School has stated that it believes the complainant has an apparent vendetta against the School following his son's failure to obtain a place at the School in 2012.

²[http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

17. Further to this, the School also explained that when looking at the context and history of the requests made regarding the issue of the admission process, it has spent a considerable amount of time and resources in dealing with the large volume of requests at a significant cost to the School. It explained:

"...there has been a considerable diversion of time and attention from the School's core purpose of educating pupils".

18. The School explained that the complainant had previously explained his purpose behind his information requests. His purpose was to understand the normal process of admissions when no errors occur and to understand the exact nature of the error which occurred in October 2012.

19. The School explained that the information requested in 4(a) *"would not assist in any meaningful way for either of those purposes"*. The School stated that it had given the complainant comparable information for 2011 and this information would be adequate as a comparator for the 2012 information. It further stated that the information regarding the 2013 tests would not be relevant to the error that occurred on the 2012 tests.

20. The School also considered whether there was any public interest in the requested information. The School confirmed that there is general public interested in the testing process and the way in which results are calculated and monitored. The School explained that much of this information is already in the public domain as a consequence of the information requests submitted by the complainant. The School explained:

"The specific information requested in relation to the 2013 exam could actually have the opposite effect, and could mislead those who have scored higher or lower than average, and make presumptions about the offering of a place... Therefore the release of this information before the admissions process is concluded could be misleading, and cause confusion amongst those currently going through that process".

Complainant's submissions

21. The complainant explained that the Commissioner had upheld his previous complaint against the School. However, the School is appealing this decision and he therefore submitted a new request to the School. He explained:

"I believe the Tribunal may take some time so in the interim requested summary information".

22. He further explained that the School had previously indicated that it may consider section 14 in later requests. He therefore told the Commissioner that the reason behind his request was to understand the correct process the School use to calculate standardised scores and the nature of any error which was made in October 2012. He further explained that he went to the trouble to point out to the school why the request under consideration was not vexatious".
23. The complainant argued that the School:
- "...appears to be trying to indefinitely postpone disclosure of the recent test information...by working their way through successive sections of the Act as grounds for withholding the data".*

Conclusions

24. The Commissioner understands that the complainant has made a number requests for information or for clarification/confirmation on the same or similar subject matter since January 2013. The Commissioner would consider this to be voluminous amount of requests for information on the same or similar subject.
25. However the Commissioner does note that the majority of information within this request has been disclosed to the complainant. He has therefore had to consider whether there is any justification to withhold the remaining information in this set of requests under the exemption set out in section 14.
26. The Commissioner has also considered whether the information requested in request 4(a) would satisfy the complainant or whether it would lead to further requests being submitted.
27. The Commissioner acknowledges the burden and resources that the School has spent when dealing with the information requests submitted by the complainant.
28. He accepts the Schools argument that information relating to the 2013 tests is not relevant to the purpose behind the information request. The Commissioner considers that the information that has already been disclosed to the complainant goes a long way to satisfying his purpose.
29. In the Commissioner's view, the pattern of the complainant's requests also suggests that any response given by the School will automatically lead to follow up requests for clarification or confirmation and serve only to extend the life of the issue of the error that occurred in 2012. On this basis, the Commissioner has decided that the requests are manifestly unreasonable.

Other matters

30. The complainant asked the Commissioner whether the School are in breach of section 10 through the use of "*serial refusals*". He also explained that he believed the School were "*using the 20 days limit as a reason to not reply promptly*".
31. Section 10(1) requires that a public authority must provide a substantive response within the time for compliance, which is 20 working days following the date of receipt of the request.
32. In the case the Commissioner considers that the School has not breached section 10(1) and has answered the requests within the time limits.
33. The Commissioner notes that the initial response of the School (dated 9 January 2014) and the internal review (dated 29 January 2014) were provided by the same individual at the School. Part VI of the section 45 Code of Practice states that a review should be taken by someone senior to the person who took the original decision, where this is reasonably practicable.

Right of appeal

34. 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: GRC@hmcts.gsi.gov.uk

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

35. 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.
36. 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
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