

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2014

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
Westminster
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information concerning whether an academy followed its complaints procedure.
2. The Commissioner's decision is that the Department for Education ("DfE") has correctly applied the exemption set out at section 14 of FOIA.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 14 March 2014, the complainant wrote to the Education Funding Agency (EFA) and requested information in the following terms:
"I ask under The Data Protection Act/Freedom of Information Act for evidence as to how you have reached your decision. This will include where the Academy has followed each and every part of its complaints procedure".
5. The EFA is an executive agency of the DfE. Therefore information held by the EFA will also be held by the DfE for the purposes of FOIA.

6. The DfE responded on 31 March 2014. It stated that it was dealing with the request under the FOIA. The DfE explained:

"Information that the Department holds includes a letter from the academy and letters from the academy solicitors which you are already party to and some of which you provided to the Department. If these were released under the FOI Act they will become public documents and we would ask you to either confirm your agreement to this before proceeding or agree that we provided you with copies outside the terms of the FOI Act.

7. The DfE withheld the remaining information under section 21. The DfE provided the complainant with a website link to access the information.
8. The complainant subsequently asked for an internal review on 31 March 2014. In his internal review request he stated:

"You have not supplied the information as to where you have asked the Academy to show how it has followed each stage of its complaints procedure. This information is not supplied on the Academy web site as you wrongly suggest".

9. The DfE sent its outcome of the internal review on 1 May 2014. It upheld its previous decision. However it provided the complainant with a document 'Annex B' which detailed all the evidence that was used in the investigation.

10. The Commissioner is aware that the complainant made two similar follow up requests on 2 May 2014 and 9 July 2014. In his request of 9 July 2014, the complainant sought the following information:

"[name] has made reference to a letter of 7th November which was from the Academy solicitor to myself. I dispute that this letter exists so ask for a copy of this under the Data Protection Act.

There is no evidence that the Academy have shown how they followed each and every stage of its complaints procedure and [name] response does not show this. I now ask under the relevant Act to be furnished with a copy of the letter where the Academy evidence based how it followed each stage..."

11. On 1 August 2014, the DfE responded. It first addressed the complainants issue regarding the existence of a letter. The DfE explained that the letter in question was received by the DfE from the complainant on 18 February 2014. It stated:

"The letter was considered as part of your recent subject access request, but since you had supplied it to us yourself, we had good reason to

believe that you already held a copy and so a duplicate was not provided in our response to your subject access request”.

12. The DfE provided the complainant with a copy of the letter.
13. In relation to the information sought on whether the academy followed its complaints procedure, the DfE cited section 14 of FOIA.

Scope of the case

14. The complainant contacted the Commissioner on 2 May 2014 to complain about the way his request of 14 March 2014 had been handled. Specifically he argued that he had not received the information he had requested.
15. In the meantime, the DfE applied section 14 of FOIA to the complainant's follow up request of 9 July 2014. The complainant contacted the Commissioner and expressed dissatisfaction with this.
16. Subsequently, the Commissioner wrote to the complainant on 20 August 2014. He explained his view that it appeared likely that the complainant had received all recorded information that fell within the scope of his request dated 14 March 2014. He further explained that if an investigation were to be carried out, it would consider whether the DfE correctly applied section 14 to his follow up request of 9 July 2014.
17. The complainant returned to the Commissioner and again expressed dissatisfaction. The Commissioner therefore contacted the complainant and explained that he will investigate the DfE's application of section 14 to his request of 9 July 2014. The complainant did not dispute this.
18. The Commissioner has therefore had to consider whether the DfE was correct to apply section 14 of the request.

Reasons for decision

19. Section 14(1) of FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
20. 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.

21. 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.
22. 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.*"
23. 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

24. The DfE has explained that the complainant has contacted the department between 150-200 times over a period of 29 months. The DfE stated that the correspondence started in February 2012 and the FOI correspondence started in March 2014. It explained:

"Despite the longevity of this correspondence and the detail involved, it has not been possible to bring their queries to a close".

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

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)

25. The Commissioner understands that the complainant's initial complaint was regarding a bullying incident at an academy. The DfE has explained that the initial issue *"mushroomed to encapsulate racial abuse, tripping by a teacher, issues with safety at rugby matches and complaints about the Principal, Chair of Governors and Clerk to the Governing Body. It also grew to cover complaints about the YPLA's handling of his complaint"*.
26. The DfE provided the Commissioner with an example of the mushrooming effect. It explained:

"When [name] had exhausted the academy's complaints procedure, the EFA reviewed the case in line with our procedure and found that [name] complaint was not upheld. This led to further protracted correspondence which then results in a Subject Access Request, correspondence to Peter Lauener, a letter from the MP, two complaints to Ofsted and a further complaint to the EFA which was referred back to the academy".
27. It further explained:

"Another complaint was investigation by the EFA in March 2014 relating to an incident that took place in August 2013. The outcome of the investigation was that the complaint was not upheld but then this resulted in a Subject Access Request, two Freedom of Information request, an FOI Internal Review, and most recently three complaints about members of EFA staff and a complaint to the Parliamentary and Health Services Ombudsman".
28. The DfE has also noted that upon receipt of its internal review response, the complainant lodged separate complaints regarding the members of staff that were involved in the handling of the request. It confirmed that these complaints have been investigated and were not upheld.
29. The DfE argued that the requests could be classed as vexatious as they *"can fairly be seen as obsessive given the very high volume and frequency of correspondence"* and the fact the complainant continues to make requests for the same information that has been provided to him.
30. In its view, the DfE believes the complainant demonstrates a clear intention to reopen issues that have already been considered. It also believes that the complainant may be using the FOIA as a way of prolonging existing correspondence and complaints.

The Commissioner's view

31. The Commissioner is aware that the DfE has previously informed the complainant that he has either had the requested information or it is accessible by other means. He therefore considers that if the DfE were

to respond, it would appear to simply reiterate its previous response. It is clear that this is likely to dissatisfy the complainant and consequently lead to further requests, correspondence and complaints to the DfE.

32. The Commissioner understands that the complaints submitted to the DfE by the complainant have been investigated and concluded. It would therefore appear that the request under consideration opens up matters that have already been considered and closed.
33. The Commissioner does acknowledge that the complainant has an interest in the requested information. However the Commissioner is satisfied the value and purpose of the request does not outweigh the disruption that dealing with this, and other related requests, correspondence and complaints has caused the DfE.
34. The Commissioner considers that the exemption set out at section 14 prevents an individual from placing a drain on public authority's resources. He has therefore determined that the DfE was correct to rely upon section 14 of FOIA.

Right of appeal

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

36. 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.
37. 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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