

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 September 2017

Public Authority: Kirklees Council
Address: Civic Centre 3
Market Street
Huddersfield HD1 1WG

Decision (including any steps ordered)

1. The complainant has requested copies of all the Transformation Quality Improvement Officer (TQIO) and the School Improvement Partner (SIP) reports held for a particular school that cover a specified time period.
2. The Commissioner's decision is that Kirklees Council (council) has correctly applied section 14(1) of the FOIA (vexatious request).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 8 September 2016, the complainant wrote to the council and requested information in the following terms:
"Using The FOIA Act 2000 I would like to request the reports on Fairfield School from the TQIO and the SIP between September 2013 and April 2016."
5. The council responded on 5 October 2016. It stated that it considered the request to be vexatious, making reference to section 14 of the FOIA.
6. The council provided the complainant with an account of why it considered the request to be vexatious. It advised that it viewed the request to be a 'follow on' from other persistent requests made by both the complainant and another individual, some of which were for the same, or significantly similar, information. The council also suggested

that the requests were forming a pattern of disruption to the council and unjustified harassment to individuals.

7. The council also stated that the complainant was abusing his right to access information by using the FOIA *'as a means to express displeasure at previous responses'* and it considered this to be unreasonable behaviour.
8. Following an internal review the council wrote to the complainant on 21 December 2016. It maintained its original position and provided further explanation to support its decision.
9. The council stated that since February 2016 it had received seven information requests from the complainant, all of which related to one particular school. The council advised that it viewed some of the requests to be significantly similar. It referred to three particular requests which related to the appointment of a specific member of staff and one other which related to the job specification linked to that appointment. It went on to say that two other requests related to the *'fact finding investigation'* and the most recent concerned the SIP and TQIO reports. The council viewed the requests to be frequent, persistent and relating to the same issue and showed a pattern of disruption and harassment to individuals.
10. In May 2016 the complainant had been invited to meet with the officer who had been assigned the task of investigating the concerns that had been raised about the school. The council acknowledged that the complainant had put forward certain reasons for not attending the meeting. However, it still attached significant weight to his refusal, believing it showed an unwillingness to engage with the authority in relation to the investigation.
11. The council went on to say that it viewed the two further requests the complainant had submitted following the date of the meeting to be a form of duplication of the investigation which had already been conducted. It stated that this was an inappropriate and a disproportionate use of resources.
12. The council also took the view that, as a result of all the processes followed by the complainant, his concerns had been considered thoroughly and responded to. The council made reference to the complainant's submissions to independent bodies as well as his continued contact with the Corporate Complaints Team at the council. It also referred to concerns the complainant had submitted to the Deputy Leader of the Council about the same issues. The council expressed the view that the request appeared to demonstrate an unreasonable

entrenched position and the rejection of the responses which had been provided by the council.

13. The council also advised that the complainant was trying to reopen an issue which had already been addressed by the council and others and that the persistence in trying to do this was unreasonable. It went on to say that the problems at the school were 'historical' and related to issues that had already been dealt with.
14. The council confirmed to the complainant that it had weighed the evidence of the impact on the authority and balanced this against the purpose and value of the request. It stated that it had also taken account of the history and context of the request. It went on to say that it had taken the view that the value of the request was limited, believing that it was an attempt to raise and repeat issues which had already been fully formally explored.
15. It concluded by saying that it upheld the original decision that had been made on 5 October 2016 that the request was vexatious.

Scope of the case

16. The complainant contacted the Commissioner on 21 December 2016 to complain about the way his request for information had been handled.
17. The Commissioner considers the scope of his investigation to be to determine if the applicant was acting in concert with another party as suggested by the council, and whether it was correct to have refused the request as vexatious.

Reasons for Decision

Background

18. The complainant has some very specific concerns about a particular school where he had previously been employed for a number of years.
19. He has referred to reports that he has had access to which describe a change in the performance of this school in 2013. He has explained that this went from being favourable in the early part of 2013 to unfavourable by the end of the same year.
20. The complainant also appears to have knowledge of issues that were experienced by the school in terms of staff sickness and high levels of work related stress. He refers to an exodus of good quality staff and an

increase in expenditure by the school which led the school's budget to turn from a surplus in 2013 to a significant deficit by 2015.

21. The complainant states that he wishes to understand how it came to be that the school went from a budget surplus to a deficit over the period of time specified and why staff were suffering from work related stress and were absent from, or left the school. He believes that the information that has been placed in to the public domain does not provide the answers to such questions and therefore argues that his request does have some serious purpose and is in the public interest.

The complainant's representations

22. The complainant has put forward a number of arguments to the Commissioner to explain why he is not satisfied with how the council has handled his request.
23. The complainant states that, given the seriousness of the issues that surrounded the school in question, and the lack of information that had been made public about this, he did not feel that his request could be viewed to be a '*follow on*' from other persistent requests as had been suggested by the council.
24. With regards to any link between his requests and that of a specific third party, the complainant states that whilst he was aware that others also had concerns about the school, he alone is responsible for his request and he has no influence over the requests made by others. The complainant went on to say that if any of his requests are similar to those made by any other individual, or individuals, this is not the result of any collusion and is entirely coincidental.
25. The complainant has questioned the council's assertion that his requests are for the same, or significantly similar, information.
26. The complainant also disputes that his requests form a pattern of disruption and harassment of individuals. He states that his requests are legitimate enquiries made in order to obtain details about what went wrong with the particular school in question during a particular period of time.
27. With regards to the complainant's invitation to meet with the investigating officer who had looked into concerns that had been raised about the school, he asserts that it was his original intention to attend. However, he states he was then advised that there would be no documentation made available in relation to the findings of the investigating officer and no assurance was given that he would receive answers to specific questions. He became concerned about the agenda

and felt it would serve little purpose to be present and informed the council of this.

The council's representations

28. In this case, when responding to the complainant directly, the council has set out a number of arguments as to why it believed the request to be vexatious.
29. When providing its main response to the Commissioner's enquiries it is apparent that the council is placing great weight on the fact that it believes that the complainant is acting in concert with a third party and that it has considered the request in this context. The emphasis on this had not been so obvious within the responses to the complainant. Given this, the complainant may not have realised the weight which the council has attached to this argument.

Acting in concert

30. The first question the Commissioner needs to decide concerns whether the complainant is acting in concert with others in submitting this, and other, requests for information.
31. The council has provided the Commissioner with evidence of correspondence it has received from the third party which makes direct reference to the complainant. These communications also indicate some knowledge of the actions taken by the complainant.
32. The council also suggests that a reference made by the third party in an email to the council about concerns that they had raised '*on behalf of our group*' is further evidence that there are more than two people involved in raising issues about the school.
33. The council has provided the Commissioner with details of all the requests it has received from both the complainant and the third party.
34. It is apparent that the vast majority of the contact has come from the third party rather than the complainant. The third party also makes some requests which, although are still about matters relating to the school, are distinctly different to those submitted by the complainant. However, if it is determined that the complainant and third party are acting in concert, then the Commissioner considers that the contact, no matter who made it, would be considered as a whole when determining the detrimental impact being placed on the council.
35. The Commissioner has noted that some of the requests made by the third party are very similar in content to those submitted by the complainant. These are as follows:

- On 22 February 2016 the complainant submitted a request for information relating to a particular officer at the school. On 25 February 2016 the third party submitted a very similar request.
 - On 29 February 2016 the complainant requested information relating to a particular job specification. On 1 March 2016 the third party submitted a similar very request.
 - On 25 August 2016 the complainant submitted a request for a copy of the minutes of the meeting set for May 2016. On 27 August 2016 the third party submitted a very similar request.
 - On 8 September 2016 the complainant requested information relating the TQIO and SIP reports. On 14 September 2016 the third party submitted a very similar request.
36. In the Commissioner's published guidance on vexatious requests¹ it deals with campaigns, or those 'acting in concert'. Paragraph 92 of the guidance provides the following examples of evidence which an authority might cite in support of its case:
- The requests are identical or similar.
 - They have received email correspondence in which other requesters have been copied in or mentioned.
 - There is an unusual pattern of requests, for example, a large number have been submitted within the relatively short space of time.
 - A group's website makes an explicit reference to a campaign against the authority.

The complainant has advised that any similarity in the request is purely coincidental. The Commissioner accepts from the background and her understanding of matters that the third party may have some additional matters of personal concern to that of the complainant. However, the Commissioner has found the evidence which has been presented by the council which shows the time frames in which certain request were made, and the similarities in their content, to be compelling. She considers that this, and the statements made by the third party in certain correspondence to the council about the complainant and their 'group', adds support to the council's conclusions that the two parties are acting in concert with one another.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

37. The Commissioner has therefore concluded that it does seem probable that the complainant and the third party are acting in concert with one another. Therefore, their contact as a whole will be considered when deciding if it was appropriate for the council to apply section 14 in response to the complainant's request.

Section 14 -vexatious request

38. Section 14 (1) of the 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.
39. 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 and Dransfield. 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.
40. In the Dransfield case, 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 authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
41. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:
- "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).
42. The Commissioner guidance on dealing with vexatious requests includes a number of indicators that may apply in the case of a vexatious request. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.

Disproportionate effort

43. The ICO guidance says that authorities must be careful to differentiate between cases where the requesters are abusing their information rights to engage in a pattern of disruption, and those instances where the requesters are using the FOIA as a channel to obtain information that will assist their campaign on an underlying issue. It goes on to say that if it is deemed that the requests are genuinely directed at gathering information about an underlying issue, then the authority will only be able to apply section 14(1) where it can show that the aggregated impact of dealing with the request would cause a disproportionate and unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that a public authority should weigh the evidence about the impact caused by the request submitted as part of the campaign against the serious purpose and value of the campaign and the extent to which the requests further that purpose. Where relevant, public authorities will also need to take into account wider factors such as the background and history of the request.
44. The Commissioner has given consideration as to whether the request, or the impact of dealing with the request, is justified and proportionate. When doing so she has found it helpful to assess the purpose and value of the request.
45. The council has shown that, in total, it received thirty nine requests from the complainant and the third party within the time period 22 February 2016 to 16 September 2016 (and one further request in 2017). In addition to this, the council received further communications about the requests and responses as well as other correspondence from both parties about the school.
46. The council has acknowledged that there may have been a legitimate interest in obtaining certain information about the school. It states that it strived to respond as specifically as it could to the requests and subsequent questions and assumptions that it has received from the complainant and the third party. However, it believes that the number of requests on the same theme has reached a point where it is no longer reasonable for it to expend further resources on dealing with the requests.
47. The council has also repeatedly made the point that the school is responsible for its own recruitment and the employees of that school are not council staff. Whilst it agreed to appoint an investigating officer to look into matters, it was not accountable for the actions of the school.

48. The Commissioner accepts that the council has tried to respond to the complainant and third party's requests and queries and that this has led to further requests regarding the same issue.
49. The Commissioner concludes that the evidence suggests that there is persistence to the requests and that this may be considered when determining if responding to the request would constitute disproportionate effort and unjustified level of disruption, irritation or distress. However, this must be considered alongside any value of the request, specifically any wider public interest there may be in the information.

Purpose and value of the request

50. The Commissioner, in this particular instance, understands that there may have been some strong feeling about what happened at the school and how it came to be in the position that it was. She also acknowledges that there would be a strong public interest in transparency and accountability where there are concerns about potential failings within a school.
51. The council has advised that information relating to the matter is already in the public domain and, in particular, refers to an audit report that was provided in response to an FOIA request received from a third party in relation to the school. The Commissioner also notes that the media had reported on the issues of concern that had been raised by certain parties and that the council had responded to confirm that the issues were subject to a formal investigation.
52. Although the information which is already in the public domain is limited in content, it does confirm some detail relating to the problems of staff absences due to sickness together with the resulting expenditure which was required to provide replacement staff. It therefore does provide the public with some understanding of the problems which were being experienced by the school.²
53. The Commissioner accepts that there may have been an expectation that information relating to the investigation would have been made publicly available in the form of a report or similar. She is also mindful of the fact that had a report been published, it may have provided a greater insight into what happened at the school than that information which is already in the public domain.
54. However, whilst the findings of the investigation were not recorded in a

² <http://www.examiner.co.uk/news/west-yorkshire-news/ex-head-fairfield-special-school-10666176>

permanent format, the Commissioner has taken account of the fact that the complainant, and others, were invited to a meeting where the investigating officer intended to discuss the outcome.

55. The Commissioner appreciates that the complainant had his reasons for not attending the meeting but agrees with the council that his failure to do so is a significant point to note. Had he attended and not been given information of any value, then the Commissioner may have been more sympathetic to the complainant's argument that his questions remain unanswered. However, the Commissioner is mindful that the investigating officer may have been able to provide information that was not necessarily held in a recorded format. She therefore cannot ignore the possibility that this meeting could have provided the complainant with the opportunity to gain some further insight into what happened at the school, and perhaps have provided him with the answers to those questions he believes remain outstanding.
56. The council has also referred to the fact that there have been significant improvements in the school in those areas where concerns had been raised. It states that the complainant is trying to reopen issues which have already been comprehensively addressed and indicates that this may be of detriment to the school's continued improvement.
57. In contrast, the complainant appears to believe that there cannot be closure on such an important and serious issue until the public has a full understanding of what led to a large number of staff absences at the school and such significant budget expenditure.

The Commissioner's view

58. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request.
59. The Commissioner is satisfied that the council has tried to respond to the complainant's requests and queries but that this has led to further requests regarding the same issue both from the complainant and the third party. She is of the view that this persistence suggests that they are unlikely to ever be satisfied with the outcome of any information provided and will continue to ask questions to continue debate on these issues. Indeed she is doubtful that the council will hold the information that will provide answers to the complainant's questions.
60. Having considered all the information provided by both parties it is difficult for the Commissioner to conclude whether there is a wider public interest in the information that may result from the request made by the complainant. On the one hand it seems unlikely that new information will result from these requests which will continue to be on

the same theme. On the other hand, there could be some value to further openness and transparency in relation to the running of the school so there is a greater public understanding of any potential failings which may, or may not, have occurred and why.

61. It is clear that the issues between the council and the complainant have been ongoing for some time and do not appear to be at a stage where they will be resolved soon. The council believes that the complainant will never be satisfied with the outcome of any information provided and will continually ask questions in order to reopen the debate and issues which have already been considered and addressed by the relevant bodies.
62. The Commissioner can only draw her conclusions based on the fact that the council has already made attempts to provide information to the complainant in previous responses and additional correspondence and also offered a meeting to discuss the outcome of the investigation.
63. Whilst the Commissioner does not consider there to be a significant burden in terms of time and resources in dealing with the requests (as, in the main they are succinct and short nature), she still considers that the council has demonstrated that the requests and correspondence have shown a persistence and have reached a point where it is no longer reasonable for the council to expend further responses, regardless of how much, on dealing with the requests.
64. The Commissioner is minded to accept the arguments from the council that any further responses will not resolve the issue and will only serve to reopen points that have already been addressed or which the council has already advised it is unable to address.
65. The Commissioner has given consideration to the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1). She has decided that the Council was correct to find the request vexatious. The Commissioner is satisfied that the request is persistent and the effort in dealing with the request would be disproportionate. The Commissioner therefore finds that section 14(1) has been applied correctly in this case.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF