

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2017

Public Authority: Lancashire County Council
Address: County Hall
Preston
Lancashire
PR1 8XJ

Decision (including any steps ordered)

1. The complainant has requested information relating to Lancashire County Council's actions, including actions in relation to a specific school. The Commissioner's decision is that Lancashire County Council has correctly applied the provision for vexatious requests at section 14(1) of the FOIA. She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 31 March 2017, the complainant wrote to Lancashire County Council ('the council') and made a 27 point request for information under the following headings:

Single point of contact 'protocol'

Monitoring Officer, involvement ([name redacted])

Receiving information, filing information and not acting 'protocol'
([name redacted])

([Name redacted]) Whistleblowing disclosure(s)

Schools HR ([name redacted])

The full text of the requests are contained in the annex to this decision notice.

3. The council responded on 7 May 2017 and refused to provide the requested information citing the cost of compliance exemption at section 12 of the FOIA.
4. The complainant expressed dissatisfaction with the response on 8 and 15 May 2017.
5. On 22 May 2017 the council provided its internal review response. It revised its position stating that the request is vexatious under section 14(1) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 25 May 2017 to complain about the way his request for information had been handled. He asked for his complaint to be considered in conjunction with another complaint he made (case reference FS506740940).
7. The Commissioner has considered whether the council has correctly applied the provision for vexatious requests at section 14(1) of the FOIA.
8. The other complaint referred to by the complainant is currently being dealt with under case reference FS50685147. The requests for information in that case differ from those in this case but relate to the same underlying issue and the consideration for the Commissioner is also whether the request is vexatious under section 14(1) of the FOIA. Given that the complaints relate to different public authorities, the Commissioner has not deemed it necessary to consider the complaints as one issue.

Reasons for decision

9. 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.
 10. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, the Upper
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¹ UKUT 440 (AAC) (28 January 2013)

Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

11. 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 and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and 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

"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).

12. The Commissioner therefore needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
13. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her 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.
14. The council explained to the Commissioner that the requests stem from issues the complainant's wife had with her employment at a school and

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

allegations that the school's head teacher has a problem with alcohol. It said that each of the matters the complainant is pursuing has arisen as a consequence of his refusal to accept or comprehend the information it has already provided to him and that what he is now demanding, as a result of his refusal to accept, is a new analysis of a new set of issues that have arisen relating to the council's attempts to deal with him after it has already addressed his concerns as best it can. It categorised what the complainant is now enquiring about as follows:

- its use of a single point of contact
 - the monitoring officer's assessment of the council's responsibilities in relation to a school
 - its decision not to process his information/complaints
 - its response to purported whistleblowing
 - its human resources advice to a school under a service contract.
15. The council informed the Commissioner that the complainant's underlying issues have been addressed in plentiful correspondence and lengthy phone calls with him by officers such as the Head of Internal Audit, the Monitoring Officer (who is also Director of Governance, Finance and Public Services), the Complaints and Appeals Manager and others within the council. It said that the key points have been set out in letters to the complainant on 16 August 2016, 7 December 2016 and 5 April 2017 and provided the Commissioner with copies of those letters. The council explained that the complainant and his wife have been previously told, with explanations, why the issues are a matter for the school (as a separate data controller and public authority) and not the council but this seems to have just generated further protracted correspondence from the complainant. It said that such correspondence amounts to hundreds of emails and telephone calls and that any dialogue with the complainant resulted in further voluminous correspondence from him, much of which was simply going over old ground. The council said that this was not because the explanations from it were ambiguous, unclear or unhelpful and that, on the contrary, a vast amount of officer time has been spent with trying to explain and clarify issues. It also said that, in some cases, contact with the complainant generates complaints or grievances against officers who are named or who otherwise become visible to him and this was in a large part why the unusual step of appointing a single point of contact was implemented.
16. In relation to the requests in this case, the council said that the complainant's questions have little or no basis in reality and that attempting to address them would be burdensome, futile and virtually impossible. It also said that it does not believe that responding to the questions would provide the complainant with what he wants.

17. The council said that it is clear beyond any reasonable doubt that complying with the request in its entirety would have incurred a commitment of resources far in excess of the appropriate limit of £450 and that it is likely that some single questions would in themselves exceed that limit, as they would require the council to contact every service across the authority, each of which would have to consult the employees within their service and it asked the Commissioner to note that the council currently has approximately 12,000 employees. It also said some of the questions were phrased in an open-ended or vague manner, rendering some of them to be very loosely asking for recorded information which would have required additional work by officers to try and locate any pertinent information.
18. It was submitted by the council that its officers cannot be expected to divert a vast amount of time spanning several years with one individual on one matter that they wish to pursue with unreasonable persistence. It said that this is an unjustified expense of council resources which diverts officers from their daily duties, and, importantly, impacts upon the time available for officers to deal with the other many thousands of residents of Lancashire.
19. The council also said that whilst the complainant's language within his request, or any other many items of correspondence, cannot reasonably be seen to be abusive or necessarily aggressive, it would appear that he is minded to hold grudges against individual officers of the council, with individuals subsequently being complained about or having their integrity unreasonably questioned. It pointed out that the request in this case singled out named officers and questions their right to act in the way they have.
20. In addition to the above, the council said that the complainant's request in this case has gone off on a tangent from the core issue that started all of this. The council is of the view that the request lacks clear focus and is an attempt to cause disruption because the complainant is unreasonably unhappy with how it has previously responded to his queries and complaints, those being queries and complaints that were a matter for the school and not the council.
21. In relation to the serious purpose and value of the request the Commissioner asked the council to comment on the following points made by the complainant. The council's response to each point, where provided, is also noted below.
 - To provide transparency on actions and decisions being taken within Local Government.

The council responded that this is a rather generic and somewhat spurious argument that could be applied to any of the 1800 FOI requests it receives per year (the vast majority of which are responded to, where possible within time constraints or where obvious exemptions apply) and that it proactively makes vast amounts of such information available via its website.

- So that he can research and better understand Local Government.

The council said that this is a very generic and spurious argument and that there is a vast amount of information regarding local government and how it operates available on its website and those of other authorities and government departments.

- The requested information is reusable in terms of re-investment value to others, who may be subjected to such protocols or have procedures such as "single point of contact etc" imposed upon them.

The council responded that, firstly, there is no such 'protocol'. It explained that on the extremely rare occasions that an individual is assigned a single point of contact it is a last resort, and is a decision that is made 'locally' within a service by an appropriate manager depending on the particular and specific circumstances of the case. It said that when such an unusual step is taken the individual affected is fully advised of the circumstances and reasons for the decision. In addition, it said that there is no wider public interest in such information being made public because it is a step that is very rarely taken, depends on differing circumstances, and would likely apply to a negligible proportion of its customers, each of which would have the reasons fully explained to them.

- He has been subjected to unprofessional treatment against the standards expected of public office.

The council said that it strongly refutes the complainant's opinion on this as it has invested much time and effort with the complainant, which has been of a professional nature and with full integrity, and that this has been unreasonably dismissed by the complainant.

- The accumulation of e-mail correspondence is a reflection of the council not following its own written policies nor applying any degree of transparency when responding, thus generating more correspondence to ascertain why. It reflects the reasonable

attempts the complainant has made to try and resolve the issue internally with the council.

The council said that it disagrees with the complainant's opinion on this and said that helpful and thorough correspondence with the complainant results in voluminous and often multiple email replies, some of which are 'addendum' replies sent before it has any reasonable time to respond to the first.

- Written procedure states that a workplace Bullying and harassment case should not exceed 30 days but the council extended this by almost 2 years.

The council said that this was a matter for the school and as such the council was not responsible.

- That matters have not been ongoing since 2014, only since 2016. But in 2014 the complainant's wife was asked to be a witness relating to a headteacher placing children in harms way by being drunk.
- Some local government officers have placed children at risk which has a significant impact on the public.
- It is in the interests of the public to determine facts relating to breaches of effective child / safeguarding provision and unethical conduct, questionable practices and miscarriages of justice.
- He is trying to determine who or what is responsible for Local Government officers not acting in accordance with written procedures and standards which are designed to keep children safe and expose unethical conduct within government office.

The council responded that the arguments about the safeguarding of children have been explained to him previously and he has been advised that his concerns are a matter for the school, not the council.

22. As stated in paragraph 12, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
23. The Commissioner has considered the purpose and value of this request and regards it as enabling an understanding as to the use of a single point of contact, the council's responsibilities in respect of schools, circumstances relating to complaints and whistleblowing disclosures not

being processed, and circumstances relating to complaints made to schools. She considers that this does have serious purpose and value.

24. The Commissioner has considered the council's position that the complainant's underlying issues have been addressed. She notes that the complaint correspondence from the council to the complainant and his wife, dated 16 August 2016, 7 December 2016 and 5 April 2017, clearly explains that the issues raised are matters for the school, and provides the legal basis for why that it is the case. The correspondence also explains that the complainant's concerns about safeguarding have been properly addressed and, although it will not reinvestigate matters it considers closed and will not respond to future correspondence on the matter, the complainant is able to report any new safeguarding concerns.
25. It appears to the Commissioner that the requests are designed to continue the complainant's dispute with the council rather than being a genuine attempt to obtain recorded information. An example of this can be seen at question 5 of the request ("Under what SPECIFIC [sic] circumstance or right does [name redacted] present for dissolving LCC as being "**ultimately**" responsible for employees who may work in a School BUT who hold a contract of employment with LCC. (please refer to employment law in relation to contracts of employment. Also if quoting specific legislation, please cross check this with LCC Contracts of employment for teachers to ensure this is represented within and provide an explanation") because correspondence from the council prior to the request being made provides answers to that question.
26. The Commissioner also considers that the requests ask for explanations regarding actions taken against the complainant, or in respect of his complaints, which he doesn't agree with. The requests also seek more than access to recorded information, for example, question 5 quoted in the above paragraph asks the council to cross check legislation with contracts of employment. It appears to the Commissioner that the requests are a means of circumventing the council's decision not to correspond further with the complainant about the background dispute which can be considered to be an inappropriate use of the FOIA regime.
27. In relation to the council's position that any dialogue with the council results in further correspondence, the Commissioner has seen an example of this in direct relation to the requests in this case. The council's internal review response clearly referred the complainant to the Commissioner if he remained dissatisfied with the handling of the request yet the complainant sent two further lengthy emails questioning the decision and who determined that the request was vexatious when the internal review response was clear as to the fact that it was the

Director of Governance, Finance and Public Services who made the decision.

28. The Commissioner agrees with the council that the request singles out officers against whom the complainant appears to hold a grudge due to previous dealings with those officers and considers this to be an indicator of a vexatious request.
30. The Commissioner also agrees with the council that responding to the 27 point request would place a burden on the authority. She is aware that the complainant said that he was willing to withdraw requests 11, 18 and 22 in order to reduce the time spent dealing with the matter. However, even discounting those three requests, the Commissioner can still appreciate the amount of work that would need to be undertaken to respond to the requests, particularly given that the requests seek explanations and justifications which would require work to try and locate any pertinent information which may be held that answers the questions raised.
31. Although the Commissioner can appreciate that the requests do have serious purpose and value, she considers that the value has been reduced because the council has stated that the requests in this case largely cover old ground and the issues have been dealt with. It is not for the Commissioner to judge how the council should deal with complaints. However, she does consider that the council should be allowed to do so in a manner that it judges to be proportionate to the issue and its resources and considers that any issues with the council's handling of the matters in this case this could be taken to the Local Government Ombudsman. She also considers that the value is reduced because the council has explained to the complainant the next step is to go to the Local Government Ombudsman but is not aware that the complainant has taken this more appropriate avenue.
32. The Commissioner also considers that providing the requested information may not satisfy the complainant. Compliance with the request may result in further correspondence and the Commissioner has seen no evidence to suggest that providing the requested information would satisfy the complainant or bring an end to the issue. Conversely, she considers that the complainant may use the requested information to create further points of dispute. As mentioned above, the complainant can take the issue to the Local Government Ombudsman and therefore there is an alternative avenue for the complainant to pursue his concerns without making requests for information to the council.
33. Taking into account the context and history of this case, the Commissioner does not consider that the purpose of the request justifies the disproportionate effect on the council. As stated above, she

considers that providing the requested information may not satisfy the complainant and may result in further correspondence and not bring an end to the issue when there is an alternative avenue which the complainant can use to further his concerns. The Commissioner acknowledges the existence of indicators of a vexatious request, including burden on the authority, personal grudges and unreasonable persistence, and can understand how responding to this request, when coupled with previous dealings on the same matter, would cause a disproportionate or unjustified level of disruption, irritation or distress.

34. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of vexatious requests, the Commissioner has decided that the council was correct to deem the requests as vexatious. Accordingly the Commissioner finds that section 14(1) of the FOIA is engaged.

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

Deborah Clark
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Single point of contact 'protocol'

1. Please explain what, criteria, or circumstances allows Lancashire County Council the right to impose upon an individual / family or group of people a single point of contact protocol?
2. How many recorded individuals, families or groups of people were alleged to be in contravention of the "single point of contact protocol" over the last year.
3. Please explain why Lancashire County Councils single point of contact protocol removes the right of an individual / family or group to contact Local authority departments such as the designated officer for child protection/safeguarding, the information governance team and accessing the formal complaints procedures?

Monitoring officer, involvement ([name redacted])

4. Under what circumstances or right does [name redacted] present for dissolving LCC as being "**ultimately**" responsible for voluntarily controlled, maintained Schools. Please provide evidence of who is ultimately responsible if LCC is not.
5. Under what SPECIFIC [sic] circumstance or right does [name redacted] present for dissolving LCC as being "**ultimately**" responsible for employees who may work in a School BUT who hold a contract of employment with LCC. (please refer to employment law in relation to contracts of employment. Also if quoting specific legislation, please cross check this with LCC Contracts of employment for teachers to ensure this is represented within and provide an explanation)
6. Under what circumstances or right does [name redacted] present for instructing LCC Staff members to NOT follow LCC policy, specifically section 7 of a Schools model grievance policy which allows for grievances to be submitted directly to the Local Authority, specifically avoiding the Schools own grievance process?

Receiving information, filing information and not acting 'protocol' ([name redacted])

7. Please provide the name of the protocol which allows a person receiving a complaint(s) about unethical / unprofessional conduct within the local authority to file the complaint without first acting on it. Essentially not processing the complaint?

8. Please explain under what circumstances / criteria does Lancashire County Council have for imposing upon an individual / family or group of people a protocol whereby complaints are made through the single point of contact protocol and for those complaints to be filed only and not considered or acted upon?
9. Please provide written, formal details of both the "single point of contact" and "the filed but not acted upon" protocol. (details should include the protocol(s) themselves, when they were implemented, and when they are to be reviewed by.)
10. Please provide details of how many other individuals, families or groups were placed on the single person point of contact protocol over the last year by LCC?
11. Please provide details of how many other individuals, families or groups of people were placed on the "receiving information / complaints, filing them but not acting upon them protocol" since 01/04/15 to 31/03/17?
12. Please provide details of how many complaints were received by Lancashire County Council through the "complaints will be filed but not acted upon protocol" since 01/04/15 to 31/03/17?
13. Please provide details of the persons Job role who is responsible for implementing a protocol whereby a [sic] individual / family or group is subject to a single point of contact protocol whereby the complaints that are made to them can be disposed of without going through the formal channels and without being acted upon at all?

([name redacted]) Whistleblowing disclosure(s)

14. Please explain why/how whistleblowing disclosures that allege unethical conduct of Local Government officers can remain unacted upon, when they meet the criteria as set out in policy.
15. Under what circumstances or right does LCC ([name redacted]) have for not acting on evidence and / or disclosures of unethical and unprofessional conduct either as they are presented to her, through whistleblowing disclosure OR through e-mail correspondence.
16. Under what circumstances or right does [name redacted] have for NOT accepting a whistleblowing disclosure which relates to potential unethical conduct and corruption amongst School governors?
17. Under what circumstances or right does [name redacted] have for instructing a whistleblowing informer to direct a whistleblowing disclosure to a governing body of which potential unethical conduct and

corruption is alleged against? Please provide written guidance or explanation for such a situation.

18. Please provide details of how many whistleblowing disclosures were formally received through the whistleblowing procedure which relates to miscarriages of justice and unethical conduct of LCC employees since 01/04/15 to 31/03/17 and out of these how many proceeded to investigation and / or a disciplinary? (please include HR and Schools HR, either under SLA or not)

Schools HR ([name redacted])

19. Please indicate whether [name redacted] appointment was part of the SLA between [name of school redacted] and LCC and paid for within the SLA under contract between the School and the County Council?
20. Please explain in what circumstances could a Schools HR officer who was advising a Governing body panel, switch and provide advice to a Chair of governors? (please provide an extract of where this is written and rationale of why this would be allowed.)
21. Under what circumstances or right does LCC (Schools HR) have for allowing Local Government officers to delay and impede a 'simple' bullying and harassment complaint so that it is continuing after 46 months without a schedule or timetable of events or even an explanation. (please refer to the Local Authorities own published guidelines that states that complaints should not last no longer than 30 days, unless under exceptional circumstances?)
22. Please provide details of how formal complaints were received through the official LCC complaints procedure which relates directly to LCC employees since 01/04/15 to 31/03/17 and out of these how many proceeded to investigation and / or a disciplinary? (please include HR and Schools HR, either under SLA or not)
23. Please provide details of the circumstances whereby basic information such as; those attending appeal hearings and a schedule of events can be withheld from a complainant without a reason being provided for weeks, when the information is known by the Local Authority? ([name redacted])
24. Please explain under what circumstances does Schools HR, have the right to instruct / encourage complainants to remove aspects within a complaint before an investigating officer is appointed.
25. Please explain under what circumstances does Schools HR have the right to present their own opinions and assumptions of how a respondent / complainant may have behaved thus potentially influencing and tainting

the presiding chair of Governors to think and act in a certain way that may affect the determination / outcome of an investigation.

26. Please explain under what circumstances does Schools HR have the right to influence a Chair of Governors to ignore a specific aspect of a complaint, before an investigating officer is appointed.
27. Please explain under what circumstances does a Schools HR have the right to not follow or adhere to adopted model policies in relation to complaints, when advising Schools under SLA's.