

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 October 2018

**Public Authority:** Borden Grammar School  
**Address:** Avenue of Remembrance  
Sittingbourne  
Kent  
ME10 4DB

*[The published version of this decision notices contains a number of redactions which have been marked. This has been done to protect the personal data of both the complainant in this case and the Pupil.]*

#### Decision (including any steps ordered)

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1. The complainant has requested copies of various documents relating to administration and management.
2. The Commissioner's decision is that Borden Grammar School ("the School") was entitled to rely on Section 14 of the FOIA (Vexatious) to refuse the request. However, it failed to issue an adequate refusal notice and has thus breached Section 17 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

#### Background

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4. *[Redacted]*
5. During 2016 and 2017, a pupil ("the Pupil") at the School made a series of requests, to the School itself and various other local schools, via WDTK. The requests were made using a series of pseudonyms and it would not have been obvious to any of the schools that the requestor was not using their own name.
6. *[Redacted]*

7. [Redacted]

## Request and response

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8. At 02:01, on 1 February 2018, the complainant wrote to the School and requested information in the following terms:

*The purpose of this email is to formally request information I am entitled to under the Freedom of Information Act 2000. Please provide the following information:*

- 1) *The minutes of all Full Governing Body meetings on and after 19th May 2017 and any documents filed with these minutes*
- 2) *The minutes of all Standard Committee meetings on and after 25th April 2017 and any documents filed with these minutes*
- 3) *The minutes of all Personnel and Pastoral Committee meetings after 1st Feb 2017 and any documents filed with these minutes.*
- 4) *The minutes of all Finance and Resources Committee meetings on and after 8th May 2017 and any documents filed with these minutes*
- 5) *The most recent School Improvement Plan*
- 6) *The trust's full annual report and financial statements for the year ended 31 August 2016*
- 7) *The trust's annual budget allocation*

9. Elements 1-4 of the request were identical to a request made by the Pupil which had been withdrawn before having been answered. The remaining elements were for updated versions of documents which the Pupil had previously requested.

10. The School did not respond initially and the Commissioner was forced to issue a decision notice to compel a response.<sup>1</sup> As the timeliness of the response has already been dealt with by the Commissioner it is not addressed further in this decision notice.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258752/fs50729843.pdf>

11. When the School finally did respond (on 23 April 2018), it refused the request as vexatious.
12. The complainant requested an internal review of the way that his request had been handled the following day. However the School had not provided a review by the date of this notice.
13. In view of the delays that had already occurred and the fact that a decision notice had already been issued in relation to this request, the Commissioner has exercised her discretion in this case and accepted the complaint without an internal review.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 21 May 2018 to complain about the way his request for information had been handled.
15. The Commissioner considers the scope of her investigation to be to determine whether or not the request was vexatious and whether the School issued an adequate refusal notice.
16. As well as the findings below on sections 14 and 17, both the complainant and the School should note the comments the Commissioner has made under the "Other matters" section of this notice.

### **Reasons for decision**

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#### Section 14 – Vexatious Request

17. Section 14 of FOIA states that a public authority is not obliged to "*comply with a request for information if the request is vexatious.*"
18. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
19. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

20. *Dransfield* also considered four broad issues:

- (1) the burden imposed by the request (on the public authority and its staff),
- (2) the motive of the requestor,
- (3) the value or serious purpose of the request and
- (4) harassment or distress of and to staff.

It explained that these considerations were not meant to be exhaustive and also explained 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).

21. The Commissioner has published guidance on dealing with vexatious requests,<sup>2</sup> which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
22. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*".
23. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it. The burden also falls on the public authority to justify why a particular request is vexatious – it is not for the requester to justify why a request is not vexatious.
24. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "*In cases where the issue is not clear-cut, the key question to ask is whether the request*

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

*is likely to cause a disproportionate or unjustified level of disruption, irritation or distress”.*

*The complainant's position*

25. Whilst he was under no obligation to do so, the complainant provided the Commissioner with a detailed submission, in which he explained his motive for making the request. He advanced three arguments which, he believed, showed why the request was necessary and not vexatious. These can be summarised thus:
- 1) That the Pupil clearly wanted the information and had not been provided with it.
  - 2) That the Pupil *[Redacted]* would therefore be discouraged from seeking information that he was entitled to under FOIA.
  - 3) That there is an inherent value in transparency and therefore the complainant wished to ensure that the requested information was in the public domain.
26. The complainant was keen to stress that he has no connection whatsoever with the Pupil and made the request, entirely of his own volition, for the reasons set out above.
27. The complainant also noted that, as an organisation, WDTK has “no issue” with people making requests using pseudonyms – especially where they are concerned that the act of making a request could have repercussions.

*The School's position*

28. The School's position is that the request has not been made out of a genuine desire for information but has been made for the sole purpose of causing irritation to the School.
29. In particular, the School has highlighted the short gap between the correspondence advising WDTK of the issues that had occurred and the request being submitted.
30. The School has also stressed to the Commissioner its general willingness to provide information and comply with the FOIA. It stated that its unwillingness to comply with this request was driven by its desire (and obligation) to protect the Pupil and *[Redacted]*.
31. The School does not appear to be suggesting that the request would have imposed a substantial burden. Its arguments are centred on the purpose and motive of the request and *[Redacted]*.

*The Commissioner's position*

32. The School's enquiry to WDTK was an entirely reasonable one. Complying with that enquiry may have been contrary to WDTK's policy and ethos but it does not render the enquiry unreasonable. Therefore *[Redacted]* remak[ing] the request in those circumstances is, in the Commissioner's view, inappropriate.
33. In relation to the second argument which the complainant has advanced, it appears unlikely that the complainant had any basis for this claim and the Commissioner does not believe it was necessary for the complainant to substitute his own judgement on the matter by substituting a fresh request for the same information.
34. The Commissioner considers that it is likely that none of the requests submitted by the Pupil were valid, as they were made using pseudonyms. The fact that the complainant was aware of this but chose to remake these invalid requests adds to the vexatious nature of the complainant's request. The Commissioner will address this issue further in "Other Matters".
35. The complainant has argued that he has never been in contact with the Pupil and that he has made the request on his own initiative. The Commissioner does not, however, regard this as relevant. No suggestion has been made by any party that the complainant had been in contact with the Pupil.
36. Whilst the Commissioner considers that the information in question will be of some interest to parents of the school, she also notes, even from a brief review, that much of it is already available on the School's website. The fact that the information is readily accessible to the world at large already indicates that there is very little public interest in the material being provided under the FOIA.
37. This complaint differs substantially from the majority of the complaints the Commissioner regularly deals with involving the use of Section 14. There is no prior history of requests from the complainant to the School, no underlying grievance driving the requests and no evidence of intemperate language or the targeting of a particular employee.
38. Nevertheless, the Commissioner's view is that this request was a *"manifestly unjustified, inappropriate or improper use of a formal procedure."* The complainant has used information he was privy to *[Redacted]*, to re-make a request that he knew had been previously withdrawn, for information he does not appear to have any interest in himself.

39. Instead of this request being a genuine attempt to gain access to the information sought, it appears that the complainant disapproved of the process that led to the withdrawal of the original requests and reacted to that by resubmitting those requests. *[Redacted]*. The Commissioner regards the making of the above request by the complainant as an abuse of the FOIA process.
40. Therefore the Commissioner concludes that the request was vexatious and so the School was entitled to rely on section 14 to refuse to comply with the request.

### Section 17 - Refusal Notice

41. Section 17 of FOIA states that:

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—*
- (a) states that fact,*
  - (b) specifies the exemption in question, and*
  - (c) states (if that would not otherwise be apparent) why the exemption applies.*
- (4) A public authority is not obliged to make a statement under subsection (1)(c)...if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.*
- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.*
- (7) A notice under subsection (1), (3) or (5) must—*
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*
  - (b) contain particulars of the right conferred by section 50.*

42. When the School finally issued its refusal notice to the complainant it said:

*Further to your FOI request, having taken advice we consider your request to be vexatious.*

*If you are not happy with our response, please refer the matter to the ICO.*

43. The Commissioner notes that the text above did not state explicitly that the request was being refused, nor did it mention Section 14 – although a reasonable person could have inferred this from the information that was provided.
44. However, the refusal notice did not give any indication as to why the School considered the request to be vexatious. Nor did it provide details of the School's internal review or complaints process.
45. The purpose of providing some form of explanation in a refusal notice is to allow the requestor to make informed representations, both to the public authority and, if necessary, the Commissioner as to why they believe the public authority may have erred and why the information should be provided.
46. The School's position is that safeguarding concerns restricted the amount of information it was prepared to provide to the complainant or have published on a public website. The Commissioner agrees that School was restricted in what it could say, but her view is that the School could have drawn attention to the abuse of process and/or the invalid requests without revealing information about the Pupil. A proper internal review could have resolved this issue but the School did not provide one.
47. The Commissioner's view is that, apart from in a handful of cases,<sup>3</sup> even a person who has made a vexatious request is entitled to an explanation as to why their request is considered vexatious. She therefore concludes that the School's refusal notice was inadequate and thus the School has breached Section 17 of the FOIA.

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<sup>3</sup> including where a public authority is relying on a claim that Section 17(6) of the FOIA applies



## Other matters

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### *Internal reviews*

48. There is no statutory requirement, under the FOIA, for a public authority to offer an internal review, however the Commissioner considers that it is good practice to do so. It allows the public authority the opportunity to reconsider its approach and identify any procedural errors.
49. The Commissioner accepts that, in the case of small public authorities such as schools, it is not always possible for the review to be carried out by someone who is both more senior and unconnected to the initial response. Nevertheless she is concerned that the School does not appear to offer dissatisfied requestors the opportunity to have an internal review and she would draw attention to her published guidance. She also notes that, where information has been requested which falls under the Environmental Information Regulations, an internal review is a statutory requirement and therefore the school should have a process in place to handle such requests.<sup>4</sup>

### *Requests made under a pseudonym*

50. As she explained at paragraph 35, the Commissioner considers the fact that the complainant remade an invalid request to *add* weight to the claim that the request was vexatious rather than detract from it. However, she also considers it necessary to make further comments on this issue.
51. In his submission to the Commissioner, the complainant argued that the request was not vexatious as "we [WDTK] take no issue with people using pseudonyms." WDTK is of course free to set its own policies for those using its services, but the Commissioner is bound by the legislation laid down by Parliament.
52. Section 8 of FOIA states that, in order to be considered valid, a request must be one which:

*(a) is in writing,*

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1613/internal\\_reviews\\_under\\_the\\_eir.pdf](https://ico.org.uk/media/for-organisations/documents/1613/internal_reviews_under_the_eir.pdf)

*(b) states the name of the applicant and an address for correspondence, and*

*(c) describes the information requested.*

53. The Commissioner considers that, for the purposes of the FOIA, “the name of the applicant” means the applicant’s real name. This is spelt out in both the Section 45 FOIA Code of Practice<sup>5</sup> and in the Commissioner’s published guidance.<sup>6</sup>
54. Whilst the Commissioner would normally expect a public authority to take the name that the requestor gives at face value, in cases where a requestor has clearly attempted to disguise their true identity when making a request, such as where they have used an obvious pseudonym, or where the public authority becomes aware in some other way that the requestor has not used their real name, such a request is entitled to be refused.
55. It would undermine the purpose of parts of the Act (particularly Section 14) if a requestor were able to sidestep provisions, legislated for by Parliament and designed to offer some protection for public authorities, simply by making a request under a different name.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

<sup>6</sup> <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

## Right of appeal

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56. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

57. 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.
58. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**