

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2019

Public Authority: The Governing Body of Highbury College

Address: Tudor Crescent

Portsmouth

PO6 2SA

Decision (including any steps ordered)

1. The complainant has requested Highbury College (the college) to disclose the total expense claims for the previous five academic years, starting 2014/15, made on the principal's corporate card and all accompanying receipts. The college refused to comply with the request citing section 14(1) of the FOIA on the basis that it was vexatious.
2. The Commissioner's decision is that the college is not entitled to rely on section 14(1) of the FOIA to refuse the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To issue a fresh response to the complainant in accordance with its obligations under the FOIA which does not rely on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 15 October 2018, the complainant wrote to the college and requested information in the following terms:

"Thanks for this. I would like to reduce the scope of my request. Please could the college tell me:
The total expense claims for the previous five academic years, starting 2014/15, made on the principal's corporate card, plus all accompanying receipts.

Could you let me know asap if this will not exceed the appropriate limit?"
6. As requested the college contacted the complainant on 17 October 2018 to confirm that this request appeared to be within the appropriate limit.
7. The college issued a further response on 13 November 2018 advising the complainant that it required extra time to consider the public interest test in relation to sections 31, 38, 40 and 43 of the FOIA.
8. The complainant chased the college for its response on 3, 11 and 14 January 2019.
9. The complainant then referred the matter to the Commissioner on 14 January 2019 requesting her assistance.
10. The Commissioner wrote to the college on 30 January 2019 requesting that it issues a response in accordance with the FOIA in 10 working days.
11. The college responded on 8 February 2019. It refused to comply with the request citing section 14 of the FOIA.
12. The complainant requested the college to carry out an internal review on 8 February 2019.
13. The college carried out an internal review and notified the complainant of its findings on 6 March 2019. It upheld its previous application of section 14 of the FOIA.

Scope of the case

14. The complainant contacted the Commissioner again on 9 March 2019 to complain about the way his request for information had been handled.

Specifically, the complainant disputes the application of section 14 of the FOIA and stated that the requested information is of high public interest.

15. The Commissioner considers the scope of her investigation to be to determine whether or not the college is entitled to refuse to comply with the complainant's request in accordance with section 14 of the FOIA.

Reasons for decision

16. Section 14 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."

17. 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.
18. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
19. *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 requester, (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).
20. The Commissioner has published guidance on dealing with vexatious requests, 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. Her guidance can be accessed here:

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

21. 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 requester, 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"*.
22. 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.
23. 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 is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."*
24. The college confirmed that the complainant made a previous request on 11 June 2018 for the number of first class, business class and economy flights taken by a) the college principal and b) other members of staff in the previous 3 academic years including destination and cost. In addition he asked to know the total cost of international telephone calls taken by a) the principal and b) other members of staff in the last 3 academic years. The college refused the request on the basis that compliance would exceed the appropriate limit prescribed by the FOIA (18 hours or £450.00).
25. The college stated that the complainant therefore submitted a revised request focusing on the flight information over the same period. It considered this request afresh but still felt that compliance would exceed the appropriate limit.
26. The complainant responded submitting a further request reducing the scope even further. This time to the number of first class flights taken by a) the principal and b) other members of staff in the last 12 months including destination and cost.
27. The college complied with this request on 14 August 2018 and disclosed the requested information. It provided the requested information for the principal and confirmed that it held no information for other members of staff.
28. The college confirmed that it then received a further request from the complainant on 21 September 2018. This request asked for the total expense claims for the previous 5 academic years starting 2013/14 made on the principal's corporate card including receipts. The college responded on 15 October 2018 refusing to comply with this request

because again it would exceed the appropriate limit. It explained how long it would take to assemble the information for 2015/16 onwards, then how long it would take to assemble the information for 2014/15 and then separately for 2013/14.

29. The complainant responded on 16 October 2018 by submitting a revised request – the request that is the subject of this notice. The college confirmed that the FOI Officer informed the complainant the following day that this request appeared to be within the appropriate limit, indicating therefore that it could more than likely comply with it.
30. On 13 November 2018 the college contacted the complainant and confirmed that upon examination of the requested documents it felt four qualified exemptions may apply. It therefore advised the complainant that it required extra time to consider the balance of the public interest and would aim to finalise its position no later than 40 working days from the date of the request. It calculated this to equate to 11 January 2019.
31. The college advised that it received further correspondence from the complainant on 3 and 11 January 2019. This correspondence was chasing the college for its final position. It stated that it was in the process of finalising its final response on the provision of data and the application of sections 31, 38 and 40 at this time. The college confirmed that the complainant published an article on 11 January 2019 which it considers contained a number of inaccurate statements. It therefore sought advice on how it might respond. A letter was drafted and sent to the publishing organisation pointing out inaccuracies in the article and that the article was a misrepresentation of the facts. It requested the removal of the article and a published retraction and apology.
32. The college went on to say that a further, later article acknowledged that their FOIA requests were made after information from a 'whistle blower'. The college confirmed that it therefore considered it possible that they might be acting as a proxy for an individual who may have an illegitimate motive or were simply fishing for possible information that might bring credence to the whistle blower's claims without actually knowing what they are looking for. It stated that the college has not been informed of the extent and nature of the claims of the whistle blower. It stated that given the nature and tone of recent reporting as regards the college and its principal and the fact that they are relying on the claims of a whistle blower and the fishing for a variety of information which they might then use to create an article of unfounded accusations, it appeared to the college that the request was vexatious.
33. It also stated that the volume of data required, the need to redact and sift out exempt information is, in its view, an unjustified level of disruption and a major distraction from core college business. It went on

to say that it also felt the information requested appears randomly selected reflecting a scatter gun approach by an individual that is merely fishing for information without any real purpose. It commented that the first request (request relating to flights) did not reveal any information of value so the complainant has merely asked for different information and may continue to do so in the hope of eventually finding some information that could be turned into a story of sorts. It stated that it has therefore considered the continued requests and concluded they do not demonstrate any purpose or value and are vexatious.

34. The Commissioner considered these arguments and wrote to the college on 12 July 2019 to invite it to revise its position or present further, more substantive arguments to support the application of section 14 of the FOIA. It referred the college to her guidance and explained that the threshold for its application is fairly high and its purpose is to prevent the misuse of the FOIA. She commented that it appeared the main reason for its application was the publication on 11 January 2019, as the college was clearly in the process of complying with the request before this date. She stated that she did not consider this was compelling enough to warrant the application of section 14.
35. The college responded on 17 July 2019 maintaining its application of this exemption. It stated that it was disappointed with the Commissioner's preliminary assessment as it considers there is a high probability that the data released will be fashioned and twisted by the complainant to create a story that is lacking objectivity and that tenuously links the information to sensationalised headlines. It confirmed that this will undoubtedly have a damaging effect on the reputation of the college and the principal even though the information itself is benign. It argued that this is not the first time the complainant has targeted the principal, therefore it is questionable what their motives are – is it to serve the public interest or a more personal agenda directed at the principal.
36. The Commissioner does not consider there is sufficient evidence to support the application of section 14 of the FOIA in this case. The complainant's previous requests to the college are described in detail earlier in this notice and it is clear that the complainant has made conscious attempts to rephrase his requests when asked to do so to enable them to be processed in accordance with the FOIA. He has not previously challenged any refusal made by the college on the basis of section 12 (exceeding the appropriate limit). The Commissioner does not consider there is any evidence to suggest that the request is a fishing expedition or that a scattergun approach is being taken. The request is clearly worded and it is obvious from its wording what information is required and over what time period. The complainant has an interest in the finances of college, how it is being managed and how public funds are being spent both by the principal and other members of staff. These

are legitimate interests to have and the request does have serious purpose and value. There is value and purpose in obtaining information from a public authority relating to how it manages its resources and funds. Generally speaking, the public has a right to know how public money is being spent and assess whether value for money is being obtained.

37. The college has produced no evidence to demonstrate that this request will cause a disproportionate or unjustified level of disruption, irritation or distress. There is no evidence of previous requests and correspondence having this cumulative effect over time and although the college has said the task of preparing the requested information for disclosure and redacting information would be burdensome and a major distraction from core business it has provided no evidence to support this. The Commissioner would also point out here that her guidance clearly outlines that she considers section 14 of the FOIA should only apply on the basis of cost (cost of redaction) and extreme burden in a very limited number of cases. The threshold for this is extremely high. A public authority has to be able to demonstrate that the requested information contains potentially withheld information and that the process of redaction is so overwhelming it warrants the application of section 14. Again no evidence to this effect has been provided by the college.
38. The Commissioner notes that the complainant has only made a small number of requests to the college and the majority of these are a result of the complainant attempting to phrase a request that can be processed within the appropriate limit. Along the way the college has rightly provided advice and assistance to the complainant in accordance with section 16 of the FOIA to enable him to submit a request which can be processed within the cost limit. Prior to the publication on 11 January 2019 it appears that both the complainant and the college were working together to enable a suitable request (in terms of cost) to be made. The college was also in the process of complying with this request and preparing the information for disclosure. It therefore appears to the Commissioner that the main reason for applying section 14 of the FOIA is the college's concerns with this publication and any others the complainant may publish on receipt of the requested information.
39. The Commissioner put this point to the college in her correspondence of 12 July 2019. The college did not seek to correct the Commissioner in its response of 17 July 2019 and did not provide any further evidence for her to consider. It is also noted that the college described the requested information as benign in this further response.
40. The college may have genuine concerns over the publication in question but the Commissioner considers this matter should be addressed via the

appropriate channels. The Commissioner does not consider this is sufficient evidence to warrant the application of section 14 and block the complainant's right to use the FOIA at this stage.

41. For the above reasons, the Commissioner has decided that section 14 of the FOIA is engaged in this case.

Procedural matters

42. Section 10 of the FOIA requires all public authorities to respond to requests for information promptly and in any event no later than 20 working days from receipt. The request was made on 15 October 2019 and the college did not respond until 8 February 2019. The Commissioner therefore finds the college in breach of section 10 of the FOIA.

Right of appeal

43. 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@justice.gov.uk

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

44. 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.
45. 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

Samantha Coward
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