

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2019

Public Authority: The Board of Governors
Lawrence Sheriff School

Address: Clifton Road
Rugby
Warwickshire CV21 3AG

Decision (including any steps ordered)

1. The complainant has requested information relating to a decision made at two Board of Governors meetings in July 2013.
2. The Commissioner's decision is that Lawrence Sheriff School (the School) was entitled to rely on section 14(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 13 January 2019, the complainant wrote to the School and requested information in the following terms:

"Under the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 every admissions decision by an own admission authority school was to be made by the Governing Body or by an admissions committee established by the Governing Body with a minimum quorum of three.

The further regulations state:

Minutes and papers

(1) The clerk to the governing body (or the person appointed to act as clerk for the purpose of the meeting in accordance with regulation

10(3)) must ensure that minutes of the proceedings of a meeting of the governing body are drawn up and signed (subject to the approval of the governing body) by the chair at the next meeting.

(2) Subject to paragraph (3), the governing body must, as soon as reasonably practicable, make available for inspection by any interested person,

a copy of:

(a) the agenda for every meeting;

(b) the signed minutes of every such meeting; and

(c) any report or other paper considered at any such meeting.

(3) The governing body may exclude from any item required to be made available in pursuance of paragraph (2) any material relating to:

(a) a named person who works, or who it is proposed should work, at the school;

(b) a named pupil at, or candidate for admission to, the school; or

(c) any other matter that, by reason of its nature, the governing body is satisfied should remain confidential

In accordance with this, please name which people made the decision to refuse to process my application for [redacted] once the place was withdrawn and a place refused when considered afresh and who was the clerk and who was the chair? The decision was to reject the application on the grounds it was fraudulent or intentionally misleading.

Please provide me with a signed copy of the full un-redacted minutes of the governor's meeting that made the decision, showing when the decision was made and full reasons as reported by [redacted] in October 2013.

Please explain why the address was relevant when applications after 1st March are made from the waiting list and address is not considered as the waiting list was maintained in score order alone and [redacted] would clearly have been placed at the top of the waiting list.

On what grounds could the application be fraudulent or misleading when address was irrelevant and the application was made from Coventry and transferred to Warwickshire under the council's rules for selective admissions, which the governors agreed to accept. Of course, if the Governor's did not believe the evidence of a move was sufficient, it could refuse the change of address and process from Coventry. There

was no other option under the Council rules for selective admissions, which the school admissions policy agreed to follow.

Which people made the decision to withdraw the place when [redacted] wrote to the Council on three occasions before July 2013? I understand two were [redacted] and [redacted]. Please confirm this was correct. Who was the third person of the quorum of three? Was it [redacted]? I see no evidence of any other person.

These questions should be answered under the Under the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013. I ask under these provisions first and also if there is a refusal to ask, I will complain to the secretary for state of education and then consider this under the FOIA and I will take issue to the First Tier Tribunal, if necessary."

5. The School responded on 8 February 2019 and refused to provide the requested information citing section 21 of the FOIA as its basis for doing so.

6. In his request for internal review the complainant stated:

"Please confirm the school provides permission for me to use the information provided in the legal action unfettered and pass it on to the press and third parties.

A Freedom of Information Request places the information in the public domain. Your response implies such permission is confirmed.

If it does not, then I wish to have an internal review.."

7. The School provided the complainant with the outcome of the internal review on 8 April 2018 and maintained its position.
8. It also stated that it did not hold "a signed copy of the full un-redacted minutes of the governor's meeting that made the decision, showing when the decision was made and full reasons as reported by [redacted] in October 2013.". It explained that this discussion was not minuted, however under a previous information request the complainant had been provided with other minutes of meetings where this was discussed. In addition it stated that this information was also available to him by other means and therefore exempt by virtue of section 21.
9. The School further stated that the information had been provided for a specific purpose and did not allow unfettered use of the information.
10. With regard to the complainant's request for explanations, the School stated that these were not valid requests under the FOIA.

Scope of the case

11. The complainant contacted the Commissioner on 28 February 2019 to complain about the way his request for information had been handled stating:

"A FOIA request puts documents in to the public domain and allows unfettered use – the entire point of the act – accountability and transparency.

Disclosure as part of legal proceedings do not do this and there is no unfettered use of the documents disclosed.

Just because someone has information via legal action, this does not mean a request under FOIA should be refused, unless it is confirmed that the person can have unfettered use of the documents sought (that were disclosed in legal proceedings), including sending copies to the national press, as they would be in the public domain. The School makes it clear that I do not have unfettered use of the documents I have seen.

The School refuses to confirm the 3 people in a meeting. It must not refer to a document. It must specify they have the information and disclose or state it explicitly. The judgement referred to is not explicit.

The School being found at serious fault by the Local Government Ombudsman and at fault by the Independent Appeals Panel had attempted to conceal the documents requested on 9 separate occasions, being desperate they do not enter the public domain. The school even responded to me by email and the refused to accept a response asking for an internal reviews [sic] as name was not written in that email section, although it was in the document. The school knows I use that email address and were obstructive.

I ask the Information Commissioner to order the school to disclose unredacted documents I requested and confirm the identity of people in meetings. The identity of people who made the decision to remove a school place is not confirmed. It is merely implied, which is not sufficient, the refusal to answer explicitly shows the obstructive nature of the school.

I ask the Information Commissioner to rule on whether it was reasonable for the school to refuse my initial request for an internal review and whether it was obstructive."

12. In further correspondence to the Commissioner, the complainant stated:

"The School simply claims I have un-redacted documents from court proceedings so I know the identities. I accept , I know the identify of all

attendees. But, I am unable to have unfettered use of documents as they were disclosed for a specific purpose in court, under disclosure.

I want the documents to be in the public domain.

You can ask the school if they agree I can have unfettered use of the documents and to confirm Yes/No.

If yes, the matter is resolved. If no, I will take this issue to the First Tier Tribunal.

Points 4 & 7 Governors are public officers and are facing a claim for misfeasance in public office in the High Court. Minutes of governors meetings are not exempt from FOIA and the identity of those who attended are NOT confidential. It is in the public interest to confirm who they were and what they were proposing. There are no personal issues to redact.

They are not employees or junior members of staff. They acted as public officers regarding an admissions issue and not their conduct.

The minutes do not discuss confidential material about the governors."

13. During the course of the Commissioner's investigation the School also claimed a late reliance on section 40(2) and section 14 of the FOIA. Although the Commissioner would usually ask the School to advise the complainant of this, in this case she has exercised her discretion and proceeded with her decision notice. The Commissioner therefore considers the scope of this case is to be to determine if the School has correctly cited any of the exemptions it has cited.

Background

14. The school is a selective grammar school, which converted to academy status on 1 September 2014. The governing body employs the staff and is responsible for the day-to-day management of the school premises.
15. The complainant's eldest son was a pupil at the school and the complainant also applied for a place for his younger son. Places are offered at the school to potential pupils who pass the eleven-plus entrance exam and fulfil a requirement to reside in the school's catchment area.
16. The School learned that an offer of a place had been made to a child whose out of catchment area parent had allegedly used a false address to secure the offer. At that time the child was anonymised and the School did not know who the child or parent was.

17. The offer of the place was withdrawn. It turned out that the child in question was the complainant's younger son. The complainant sought to appeal the withdrawal of the offer but the school refused to entertain the appeal.
18. An independent appeal panel heard the matter on 24 November 2014. The appeal succeeded upon the basis that an appeal should have been entertained. The panel further considered that had there been an appeal it would have been allowed and a place offered; consequently, it directed that an offer of a place be made available. That was done, but he chose not to take it up.

Reasons for decision

19. The purpose of the Freedom of Information Act is to give the public greater access to information about the workings of government and public bodies. It is to make public bodies accountable to the public and enable transparency in the operation of public bodies.
20. Each request is 'applicant blind' as all requesters are treated equally, therefore information should only be disclosed if it would be disclosed to anyone else who asked. In other words, information disclosed under the FOIA should be considered as if it were being released to the world at large.
21. As the School has applied section 14 to the whole of the request, the Commissioner has considered this first. In the event that she does not find it is applicable she will consider the other exemptions cited.

Section 14(1)

22. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
23. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). 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.
24. 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.

25. 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).
26. 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 requests¹. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
27. 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.
28. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
29. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.
30. The School first emphasised that it has not applied a blanket restriction preventing the complainant from receiving any information requested under the FOIA, and this exemption is only being applied to requests relating to this subject.

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

The School's position

31. The School stated that the complainant's conduct, over the course of a number of years but also in relation to this specific request, shows this request to be vexatious under Section 14(1) of the Freedom of Information Act 2000.
32. It explained that for whatever reason, the requester is targeting his correspondence towards a particular employee or office holder against whom they have some personal enmity.
33. It further considered that the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny. The requester has explicitly stated that it is his intention to cause disruption to the public authority.
34. The complainant has the information requested in a redacted format and he is aware that there were no minutes of the discussion that took place on 13 September 2013 through:
 - An email from [redacted] 12th September 2014 and;
 - As part of two courts cases where they have been thoroughly covered.
35. Given that the complainant knows this is the case the School submitted that this must now fall under a refusal under section 14 due to the vexatious nature of the request. When taking into account the context and history of the request, the request falls under much of the guidance given by the Commissioner when deciding whether a request is vexatious or not.
36. The School also referred to legal proceedings it brought under Section 3 of the Protection from Harassment Act 1997 and provided the Commissioner with a link to the judgement issued in September 2015. It referred to the Judge's comments in a number of paragraphs in particular, but considered that the whole case is of relevance here.
37. The Commissioner has decided not to include all these details in her decision notice. Both parties are aware of the contents of the judgement and there is nothing to be gained repeating them here.
38. However, the Commissioner notes that the judgement states:

"The complainant admitted when cross-examined that he wanted the school to take disciplinary action". The judgement further states "The means that he adopted to secure that aim was to vilify and denigrate them both personally and professionally through emails, through letters,

often at great length, whether to the school, to governors, to other heads, to government institutions.

In July 2014, in his submission for the school place appeal, the complainant included the following matters: There will be media pressure for the resignation of the head teacher and Chair of governors; that if his son was not admitted to school his animosity would increase and extend beyond the time his children leave the school, and would not end when they finish their education; that the school should accept that the school place was unlawfully withdrawn and paying £17,000 per year.

39. The complainant subsequently launched legal action (launched in 2015 and case heard November 2018) against a specific member of staff. This second case judgement was again made against the complainant and in favour of the member of staff; clearing [redacted] due to "*not one scintilla of evidence*". Since then an appeal was made by the complainant but it was dismissed "*entirely without merit*". There is therefore considerable evidence of the requester having a "personal grudge" against those involved in the FOI request.
40. The complainant requested this information back in 2013 and was given the information in a redacted format. This same information has now been covered within two court cases and has been subject to thorough legal scrutiny and yet the same information is still being requested.
41. The School also stated it has had a number of overlapping requests about the same or similar issues made under different names, but due to the links explained below they are highly likely to either be made by the complainant or on his behalf.
42. At the same time this request was made, the School was also dealing with a request about the legal costs of the same issue under another name. The complainant stated under oath, in the court case, that he had been working with this individual. As part of an internal review of this FOI request, a request for identification was made in order to ensure that the request was valid. No identification was provided and no further correspondence was made with the individual, therefore the School believes that this was also the complainant and this was an overlapping request regarding a same issue.
43. Another request asking about how the processes, within School, were arranged over the same issue as this admission case, was also sent in under yet a third name. Again the School asked for proof of identity in person in order to ensure it was a valid FOI request. This again was not provided and the correspondence stopped. The School believes this request to also be one from the complainant.

44. The School considers this follows a pattern in relation to requests of a similar type made under various names over a period of eight years.
45. The complainant has requested unfettered use of these documents and has (as stated above) been seeking media pressure for the resignation of the head teacher and Chair of governors.
46. The complainant has also been attempting to bring proceedings for misfeasance in public office.

The Commissioner's decision

47. The Commissioner notes the background to this case is the complainant's dispute with the School since 2012. The Commissioner considers that disclosure of further information would not resolve this issue.
48. Furthermore, the complainant acknowledges that he already has the information in question albeit via another route. This request seeks to obtain that information through the FOIA so that he can disclose it to the 'world at large'.
49. Clearly the burden of proof for section 14 of the FOIA to apply is not as high as that required in court proceedings. The Commissioner has considered the information provided by the School and it is clear to her that the complainant is attempting to re-visit issues that have already been dealt with. The complainant's appeal succeeded in 2014, a place was subsequently offered, although it was not taken up. The School has presented evidence that indicates the complainant is engaged in a personal grudge against the School and certain individuals in particular.
50. In addition, the complainant has stated that he wants the information to be in the public domain, and to pass it on to the press and third parties to seek media pressure for the resignation of the head teacher and Chair of governors. It is also apparent to the Commissioner that even though his son was offered a place at the School he has continued to pursue the matter.
51. As the School's complaint process and other legal avenues have been exhausted it appears the complainant has now resorted to using the FOIA to continue raising issues. This is a clear abuse of the FOIA process and consequently the Commissioner upholds the School's application of section 14 to the request.

Other matters

52. Although the Commissioner has found that the School correctly cited section 14 to the request, she notes that in the complainant's correspondence he stated the following:

"I ask the Information Commissioner to order the school to disclose unredacted documents I requested and confirm the identity of people in meetings. The identity of people who made the decision to remove a school place is not confirmed. It is merely implied, which is not sufficient, the refusal to answer explicitly shows the obstructive nature of the school.

I ask the Information Commissioner to rule on whether it was reasonable for the school to refuse my initial request for an internal review and whether it was obstructive.

Governors are public officers and are facing a claim for misfeasance in public office in the High Court. Minutes of governors meetings are not exempt from FOIA and the identity of those who attended are NOT confidential. It is in the public interest to confirm who they were and what they were proposing. There are no personal issues to redact.

They are not employees or junior members of staff. They acted as public officers regarding an admissions issue and not their conduct.

The minutes do not discuss confidential material about the governors"

53. For completeness, and because the complainant has not been made aware separately of the application of section 14, the Commissioner has chosen to comment on these matters but not carry out a full analysis.

Request for an internal review

54. The Commissioner would not generally expect a public authority to confirm the identity of a requestor at the internal review stage. Any concerns over identity would normally be addressed before the request is responded to.
55. However, in this case, and given the explanation provided by the School that the complainant has 'worked with another individual' and its concerns over the identity of other requestors, the Commissioner is satisfied that it was an appropriate step to take.

Identity of meeting attendees

56. In its initial response the School cited section 21 – information reasonably accessible by other means. Section 21 is an absolute exemption and is not subject to the public interest test.
57. Unlike consideration of most other exemptions in FOIA, this allows a public authority to take the individual circumstances of the applicant into account. Note the importance of the phrase “to the applicant” – in effect a distinction is being made between information that is reasonably accessible to the particular applicant and information that is available to the general public.
58. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of FOIA. For example, some people will have access to certain information by means of other legislation, such as the access rights afforded to specific persons under the Access to Health Records Act 1990.
59. The complainant acknowledges that he already has access to the requested information from another source, and consequently this is considered to be ‘reasonably accessible’.

Right of appeal

60. 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

61. 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.

62. 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

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