

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2020

Public Authority: Highdown School and Sixth Form Centre
Address: Surley Row
Emmer Green
Reading
RG4 8LR

Decision (including any steps ordered)

1. The complainant has requested information from Highdown School and Sixth Form Centre ('the School') about an incident involving their child. The School has refused to comply with the request under the FOIA as it considers the request to be vexatious under section 14(1).
2. The Commissioner's decision is as follows:
 - The request cannot be categorised as a vexatious request under section 14(1).
 - The School has breached section 17(5) as it did not provide the complainant with a section 14 refusal notice within the required timescale of 20 working days.
3. The Commissioner requires the School to take the following step to ensure compliance with the legislation:
 - Provide the complainant with a response to their request of 18 December 2019 that complies with the FOIA. If the School considers that the requested information should be withheld under any of the section 40 exemptions its response should be an appropriate refusal notice.
4. The School must take this step 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.

Context

5. Sometimes an applicant will submit a request for information to a public authority that the authority should consider under both the data protection legislation and the FOIA. This is often the case when an applicant has submitted a request for a file about a complaint they have submitted to the authority, for example, or, as here, when the request is for information about a particular incident that has occurred in which they or someone they know was involved.
6. In these cases, all the information the applicant has requested may be their own personal data. But in other cases, some information within scope of the request may not be the applicant's own personal data and may be the personal data of third persons.
7. In cases where all the requested information is the applicant's own personal data, and the applicant has referred to the FOIA, the authority should issue a refusal notice under section 17(1) of the FOIA within 20 working days of the request, explaining that the requested information is exempt from disclosure under section 40(1) of the FOIA as it is the applicant's own personal data. The authority would then go on to explain to the applicant that it will handle their request under the data protection (DP) legislation as a subject access request, and then do so.
8. The Commissioner would expect the majority of applicants to be satisfied with that approach, in these type of cases.
9. However, as noted, there will also be cases where some of the requested information is not the applicant's own personal data but is the personal data of third persons. Again, the authority should issue a section 17(1) refusal notice, explaining that some of the information is exempt under section 40(1) of the FOIA, as above, and some is exempt under section 40(2) of the FOIA as it is the personal data of third persons.
10. The authority may also rely on section 40(5) to neither confirm nor deny it holds the requested information. Confirming or denying information is held may, in some cases, in itself release the applicant's or other people's personal data.
11. An applicant may be satisfied with one of the above section 40 responses and, from an FOIA perspective, the matter would conclude at that point. Alternatively, the applicant may ask the authority to

reconsider one or both of the FOIA exemptions it has relied on. If the applicant remained dissatisfied after the authority has carried out an internal review, the applicant has the option of submitting an FOIA complaint about the matter to the Commissioner.

12. Either way, in such cases, the authority should consider the request under both the FOIA and the DP legislation. That need not be a complicated or onerous process, however.

Request and response

13. On 18 December 2019 the complainant wrote to the School and requested information in the following terms:

"Following the stage 3 complaint by myself and my [Redacted] regarding [Redacted], I am requesting under the Freedom of Information Act the documents and information held by you in relation to the matter.

The request includes, but is not limited to:

Any emails, briefings, memos, letters, notes, etc regarding [Redacted], and the complaint through its various stages (including process of how to deal with the complaint) up until the date of this request to and/or from the following:

- *Rachel Cave, headteacher*
- *Matthew Grantham, deputy headteacher*
- *[Redacted]*
- *Sara Capaldi, assistant headteacher*
- *Ginny Monro, chair of governors*
- *Simon Lovelock, governor*
- *S Siddiqui, governor*
- *Any other Highdown governor*
- *[Redacted], clerk to the governing body*
- *Thames Valley Police*
- *Reading Borough Council*

A copy of the statement by [Redacted], as referenced by Ms Cave in her letter of [Redacted]

[Redacted] notes from the Governors Panel of [Redacted] – including my [Redacted] and I's submission, that of the school and any other part of the panel proceedings, including deliberation and drafting

The dates the governors panel met in relation to this matter; ie [Redacted] submissions, [Redacted] XX for deliberations, [Redacted] XX with XX

Any other written submission, note, memo, briefing etc provided for the panel by the school or staff

Any report, briefing or minutes etc to other governors or a meeting of governors from the panel members or clerk

Any report, email, notes, briefing, memo from the panel members or clerk to Mrs Monro and other governors outside of any formal meeting

Any communication, email, report, note, memo, briefing between Mrs Monro and Mrs Cave about any aspect of this complaint between [Redacted] and today's date

Any diary entry of any meeting between Mrs Cave, Mrs Monro (or any other governor) where this matter was discussed

Any legal advice to the school and/or governors or the panel about this matter between [Redacted] and today's date

Any advice to the school from Reading Borough Council in relation to this matter

Any draft responses for my [Redacted] and I following the panel meeting on [Redacted]

Any report, briefing, email etc from any member of the school to Thames Valley Police in relation to [Redacted]

This is an extensive list but is not exhaustive, and so we would also request any other documents or information that could be objectively classed as being within the intent of this application.

If you do not hold any of the above or it does not exist then please confirm that in your response.

I realise that there will be within the documents the names of children. We agree, obviously, for all pupils' names to be redacted. Our [Redacted] can be referred to as The Victim wherever [Redacted] name appears..."

14. The Commissioner has redacted information from the above request which she considers might in any way lead to particular individuals being identified, or where the individual's name does not appear to be in the public domain. The names of the majority of members of school staff and governors that remain in the request are already in the public

domain and the Commissioner considers their inclusion will not lead to other people being identified.

15. On 20 December 2019 the School wrote to the complainant and advised that it was treating the request under the DP legislation as the request was for the complainant's own personal data.
16. In further correspondence to the complainant dated 16 January 2020 the School advised again that it would interpret the request as a subject access request (SAR) under the DP legislation, and not a request under the FOIA. The School said it would not "split the issue". The School said that, given the background, it would not progress the SAR because it was "manifestly unreasonable".
17. The complainant requested an internal review on 19 January 2020. In correspondence dated 20 January 2020 the School advised the complainant that its correspondence of 16 January 2020 was, in effect, an internal review.
18. The matter was passed to the Commissioner at that point. The Commissioner has considered the School's handling of the request as a SAR separately, as a DP complaint.
19. With regard to this FOIA complaint the Commissioner discussed the case with both parties. It seemed to her that, if both parties were willing to compromise, the matter should be fairly straightforward to conclude. She first sought to clarify its FOIA position with the School. The School initially confirmed that it considered the requested information was exempt information under section 40(1) and section 40(2).
20. The Commissioner passed this to the complainant and advised that she considered those exemptions would apply. To be clear, the Commissioner is satisfied that the requested information would engage the above section 40 exemptions for the following reasons:
 - The complainant's request includes information that is about them directly eg the request for draft responses to them (as well as their spouse) following a particular meeting. Disclosure under the FOIA is, in effect, disclosure to the wider world. Most applicants would not want their personal data released into the wider world, which is why the section 40(1) exemption exists.
 - The complainant's request includes information that is about other people such as their spouse, above, and of course the whole request concerns the individual who was involved in the incident ie the complainant's child. Section 40(2) of the FOIA exists to prevent the disclosure of third persons' personal data into the wider world.

21. The Commissioner was therefore satisfied that the School would be entitled to withhold all the requested information under section 40(1) and section 40(2) of the FOIA. In her correspondence with the complainant the Commissioner acknowledged that there were, however, shortcomings in the School's handling of the request, which she would discuss with the School, and she invited the complainant to withdraw their FOIA complaint. The complainant noted that they had not been given the opportunity to counter the School's reliance on the section 40 exemptions. They confirmed that they preferred to progress their complaint.
22. The Commissioner then advised the School to provide the complainant with a fresh response; a refusal notice that confirmed its new position and its reliance on section 40(1) and 40(2). At this point, the School reconsidered its position again and advised the Commissioner that it now considered the request to be vexatious under section 14(1) of the FOIA. In conversation with the School, the Commissioner advised that, in her view, a more appropriate and straightforward response would be to rely on section 40(1) and 40(2) and to provide the complainant with an appropriate refusal notice. The School preferred to rely on section 14(1), however, and advised the complainant of its new position in correspondence to them dated 8 October 2020.

Scope of the case

23. The complainant contacted the Commissioner on 18 January 2020 to complain about the way their request for information had been handled.
24. Given the School's final position, the Commissioner has considered whether the complainant's request can be considered to be a vexatious request under section 14(1) of the FOIA.
25. The Commissioner has also considered the School's refusal of the request under section 17 of the FOIA.

Reasons for decision

Section 14 – vexatious and repeat requests

26. Under section 14(1) of the FOIA a public authority is not comply with a request for information if the request is vexatious.
27. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying

vexatious requests. These are set out in her published guidance and, in short, they include:

- Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
28. 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.
29. The Commissioner's guidance goes on to suggest 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.
30. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
31. In its submission to the Commissioner, the School has explained that it considers that complying with the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
32. Specifically, the School said, the complainant has already taken up a very considerable amount of executive time; demanding answers to an identical set of questions, including a significant complaints procedure with the Commissioner. The School argued that any further application of resources would cause other aspects of its administration to suffer.
33. The School considers the request is "clearly" disproportionate, in that the complainant has all the answers, and there can be no purpose or value in repeating the exercise. The School said that it seemed to its reading of relevant guidance that that this application [ie the request] is by definition *"unreasonable persistence where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public Authority."*

34. The School has said that the Commissioner found that the School had provided a satisfactory response to the request under the DP legislation. It considers that the complainant's refusal to withdraw their FOIA complaint – which concerns the same request – is also evidence that the request is vexatious.
35. The Commissioner must consider the situation as it was at the time of the request ie in December 2019. At that point the complainant had not submitted any complaints to the Commissioner, and so the Commissioner will discount the School's argument in the above paragraph.
36. In any case, the Commissioner is not persuaded that the request is a vexatious request. She considers the School has made the situation more complicated than it needed to be. Had it handled the request appropriately under the FOIA (as well as the DP legislation) when it first received it, then the complainant may not have found it necessary to submit an FOIA complaint to the Commissioner, or the resulting complaint may have been more straightforward.
37. In the Commissioner's view, the burden to the School of providing a section 40 refusal notice to the complainant would have been negligible – at the time of the request or during the Commissioner's investigation. The School advised the complainant that it would not "split the issue" ie consider their request under both the FOIA and DP legislation. In reality, it did not have a choice, particularly as in this case, the complainant had referred to the FOIA in their request. And that the School had already provided a DP response does not automatically mean that the associated FOIA request was vexatious.
38. The Commissioner understands that relations between the complainant and the School may have been strained at the time of the request, and currently. The School may find handling the complainant's request under the FOIA to be irritating. That is not sufficient, however, to be able to categorise the request as vexatious. As such, the Commissioner finds that the School cannot rely on section 14(1) to refuse to comply with the request.
39. The complainant has provided the Commissioner with their submission, putting forward a case as to why their request is not vexatious. The Commissioner has noted the complainant's arguments. She considers them to be reasonable but would have found that the request is not vexatious even without the complainant's submission.

Section 17 – refusal of request

40. Under section 17(1) of the FOIA, an authority that is relying on a Part II exemption (such as under section 40) should give the applicant a notice that a) states that fact, b) specifies the exemption in question and c) states why the exemption applies. Under section 17(5) an authority that is relying on a claim of section 12 or section 14 should give the applicant a notice stating that fact.
41. In either case, the notice should be given to the applicant within the required timescale - which is promptly, and within 20 working days following the date of receipt of the request.
42. The complainant submitted their request on 18 December 2019. The Commissioner considers that neither the School's correspondence of 20 December 2019 nor its correspondence of 16 January 2020 can be considered to be a refusal notice; that correspondence simply states that the School is handling the request under the DP legislation only.
43. The School finally provided the complainant with a section 14(1) refusal notice on 8 October 2020. This was well outside the 20 working day requirement and therefore the Commissioner finds that the School breached section 17(5) of the FOIA.

Right of appeal

44. 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

45. 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.
46. 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

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