

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2020

Public Authority: St Ralph Sherwin Catholic Multi Academy Trust

Address: St Katherine's House, 3rd Floor
St Mary's Wharf
Mansfield Road
Derby
DE1 3TQ

Decision (including any steps ordered)

1. Through two, multi part requests the complainant has requested a variety of information from St Ralph Sherwin Catholic Multi Academy Trust ('the Trust'). The Trust has categorised the requests as vexatious under section 14(1) of the FOIA and has refused to comply with them.
2. The Commissioner's decision is as follows:
 - The complainant's requests of 2 July 2019 and 7 July 2019 cannot be categorised as vexatious requests under section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - Provide the complainant with a response to the above two requests that complies with the FOIA.
4. The public authority 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.

Request and response

5. On 2 July 2019 the complainant wrote to the Trust and requested information in the following terms:

"New - Freedom of information request.

I am writing to request that you send to me the information detailed below from your organisation.

Unless otherwise stated, the requests below are for the period March 25th 2017 to July 1st 2019.

In all instances and given confidentiality it will be perfectly in order to provide the information anonymously for example by redacting the names of firms or individuals. In all instances, copies of the originals may be provided.

As previously requested: all copies of governor's minutes including sub-committees, that have not previously been provided to me - I believe that this would be from January 2018.

Plus:

- 1. The school's business management plans from 2015 to the present time*
- 2. Declarations of interests by Governors from February 2017 to the present.*
- 3. Copies of the governance structure within the school including whom within the Sir Ralph Sherwin Trust has responsibility for the school.*
- 4. Overall [sic] income to the school including the sources and purposes for moneys above £500 for each of the financial years 2017-8, 2018-9, 2019-present.*
- 5. The record of all homophobic and racist incidents within the school from March 2017 to present.*
- 6. Payments from the school to the diocese from March 2017 to present. This is to include any LCVAP money's or equivalent of.*
- 7. A copy of the fraud investigation report that was undertaken in response to the complaint against [three names redacted] by Entrust.*
- 8. A record of any financial payments the school has made to AllenPR or any other PR firm.*
- 9. A copy of the 12 notice of concern points from the LA / Entrust into the performance of the school as a result of the failed Ofsted.*
- 10. A copy of the report provided to the school from PBM Inspection Service Ltd based in Uttoxeter. This report would be from prior to September 2016.*

11. *Any notification from the government / government guidelines on when policies should be updated on the school website.*
 12. *The reference for [name redacted] from [name redacted].*
 13. *References for [name redacted] and [name redacted] written prior to March 2017. (Redacted versions to provide for complete anonymity).*
 14. *All Fire Risk Assessments from 2003 to July 2016.*
 15. *The actual fire Risk Assessment in operation that was sent out to staff and governors in August / September 2016.*
 16. *All school Business Continuity Plans from 2010 to the present.*
 17. *School plans for all building work from March 2016 to the present.*
 18. *Who provided the external review of governance on or around about the 23rd April 2018? Copy of this report.*
 19. *A breakdown of costs within the school vehicle heading within the budget."*
6. On 7 July 2019 the complainant wrote to the Trust and requested information in the following terms:
- "New - Freedom of information request.*
- I am writing to request that you send to me the information detailed below from your organisation.*
- Unless otherwise stated, the requests below are for the period January 2014 to July 7th 2019.*
- In all instances and given confidentiality it will be perfectly in order to provide the information anonymously for example by redacting the names of firms or individuals. In all instances, copies of the originals may be provided.*
1. *Any documentation that the school has produced or received concerning and ONLY with regard to safeguarding concerning [name redacted] - former employee - and, in addition, those records for the [name redacted] family.*
 2. *Safueguarding [sic] training records for all staff from January 2004 until March 2017.*
 3. *The generic risk assessment covering out of school sporting events from September 2016."*
7. The Trust responded on 22 July 2019. It advised that the complainant had submitted 13 previous FOI requests and one subject access request. The Trust confirmed that it was refusing to comply with the above two requests as it considered them to be vexatious under section 14(1) of the FOIA.

8. The Trust provided a review on 10 September 2019. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 5 December 2019 to complain about the way their requests for information had been handled.
10. In their complaint to her the complainant has discussed their dissatisfaction with aspects of a personnel matter in which they were involved, and which was ongoing at the time of their requests. The Commissioner cannot consider that matter; her role is to decide whether or not public authorities have complied with the FOIA. As such her investigation has focussed on whether the Trust can rely on section 14(1) of the FOIA to refuse to comply with the complainant's two requests.

Reasons for decision

Section 14– vexatious and repeat requests

11. Under section 14(1) of the FOIA a public authority is not required to comply with a request for information if the request is vexatious.
12. 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
13. 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 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.
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
16. In its submission to the Commissioner, the School has referred to, and discussed, the two requests being considered in this case as being subject access requests, submitted under the data protection legislation. A subject access request is a request for the applicant's own personal data. Parts of the complainant's requests refer to other people, but no part of either request appears to be a request for the complainant's own personal data. Neither request can therefore be categorised as a subject access request. The Trust has applied section 14(1) to the requests, which is a provision of the FOIA. The FOIA is the correct legislation under which the Trust should consider the requests because they are not subject access requests. They are requests for general information.
17. In its submission to the Commissioner, the Trust has provided a background to the requests. The Commissioner has noted this background but does not intend to reproduce it in this notice other than to state that it involved a personnel matter. She will record here, however, that the complainant had been submitting subject access requests and FOI requests to a named primary School and subsequently the Trust (which the primary School joined in September 2018) since 2017.
18. The Trust has then noted that, at the time of the requests, it had already provided the complainant with five lever arch files of information in response to their subject access and FOI requests. This was in addition to other information provided as part of the particular matters that were ongoing.
19. The Trust provided the Commissioner with a summary of the complainant's requests and the responses to them. The requests summarised cover the period from 22 November 2017 to 10 September 2019. The Commissioner must consider the situation as it was at the time of the requests; she therefore cannot take account of any correspondence after 7 July 2019. The Commissioner notes that in its correspondence to the complainant of 22 July 2019 the Trust had referred to them having submitted 13 previous FOI requests. The

summary document the Trust has provided lists seven, albeit multi-part, requests prior to 2 July 2019.

20. The Trust has drawn the Commissioner's attention to correspondence from the complainant in which they make allegations regarding fraud, conflicts of interest, abuse of process and financial preferment of individuals, and makes personal criticism of volunteers and staff. The Trust notes that the complainant has alleged incapability, dishonestly or other failings in respect of certain individuals which have never been alleged by anyone other than the complainant. Requests containing such allegations are, according to the Trust, annoying and disruptive by virtue of the fact that they are clearly intended to cause distress and are without any evidential basis.
21. The Trust says that when making the decision about whether to consider the two requests of 2 and 7 July 2019 as vexatious, the previous requests and "the direct personal criticism and unjustified condemnation of named personnel" was considered. It appeared that the complainant bore a personal grudge against the Trust and individuals associated with it. This is in relation to the particular matter that was ongoing at the time of the requests.
22. The Trust also considers that, due to the wider circumstances not discussed in this notice, the complainant will be aware of how certain information they have requested would be managed and what information is already published. The Trust also considers that the complainant would be aware of the financial impact on the Trust of dealing with their multiple and extensive requests. Managing the scale of requests that the complainant has submitted puts a strain on the resources of the Trust and the primary School, the Trust says. The Trust notes that, like all school budgets, the primary School's budgets are under pressure due to financial constraints.
23. According to the Trust it would take an "inordinate amount of time and resource" to comply with all 18 elements of the 2 July 2019 request and element 2 of the 7 July 2019 request would also require considerable time to be spent on it. The Trust notes that the Commissioner's published guidance on vexatious requests recognises the significant strain on an authority's resources caused by dealing with a long and frequent series of requests adds to the total burden on that organisation. The guidance advises that a request may not in itself be vexatious but may contribute to the aggregated burden on an authority.
24. In the Trust's view, the scope and scale of the requests the complainant has submitted from 2017 to 2019 suggest that the complainant would consider whatever information had been provided to be insufficient and would ask for slightly different information or more in depth information.

The Trust considers that the complainant is using the FOI legislation as part of a campaign against it.

25. In its submission the Trust has also discussed the correspondence received from the complainant after 7 July 2019, and matters associated with this. As noted, the Commissioner must focus on the situation as it was at the time of the requests in question; she cannot take account of requests or correspondence submitted after 7 July 2019, or the situation at that time.

Conclusion

26. In terms of a vexatious request, the burden such a request causes to a public authority becomes disproportionate if there is no or very little value to the request. It appears to the Commissioner that the complainant's two requests do have a value, to the complainant if no one else. This is because of the personnel matter that was ongoing at the time of the request. In the Commissioner's view the information that the complainant has requested appears to have a relevance to that matter, albeit it may not be immediately apparent why, in some instances. She is not convinced that the complainant's requests demonstrate evidence of a "grudge" or "campaign" against the Trust.
27. The Trust has said that some parts of the two requests are repeats of earlier requests which had already been responded to. A repeat request is not necessarily a vexatious request, however, and there is separate provision under the Act for repeat requests.
28. In addition, the Commissioner appreciates that it may have been time-consuming for the Trust and primary School to deal with them, but she does not consider seven previous requests in 18 months to be excessive, particularly in the circumstances of this case. This is a point the complainant has made in their complaint to the Commissioner. In addition, the information requested in those requests also appears to have a broad association with the ongoing matter – they are not requests for completely random information.
29. With regard to the complainant's tone in their correspondence with the Trust, the Commissioner has reviewed the summaries of the complainant's requests, provided by the Trust, up to and including the two requests that are the subject of this notice. It is fair to say that, in their correspondence to the Trust, the complainant is at times brusque and they do make certain allegations against particular people. However, the complainant's correspondence is not abusive or overtly aggressive and the Commissioner takes account of the likely pressures of the wider context that was ongoing at the time. That is not to say, however, that she condones the making of unsubstantiated accusations

and allegations against named individuals, which, as the Trust has noted, is likely to distress those individuals. And using intemperate language is a factor that can lead to a request being categorised as vexatious.

30. The Commissioner has considered all the circumstances of this case. It is a finely balanced matter but she has not been persuaded that the complainant's requests of 2 July 2019 and 7 July 2019 can be categorised as vexatious requests. She has therefore decided that the Trust cannot rely on section 14(1) to refuse to comply with them.
31. The step the Commissioner requires the Trust to take is to provide a response to the two requests that complies with the FOIA, not to provide the information requested, necessarily. The Trust has indicated that: parts of the requests are repeat requests; parts of the requests would require significant time and resources to comply with (although the Commissioner has noted the Trust's reservations about the provision under section 12 of the FOIA which concerns costs exceeding the appropriate limit); parts of the requests are for information that is already published and so is already accessible to the complainant; and parts of the requests are for information that is the personal information of third persons. The FOIA contains exemptions for all these circumstances, and more.
32. The Commissioner reminds the Trust that a compliant response would therefore first confirm whether or not the information being requested is held. Information that is held would then be disclosed if it is not exempt information. If necessary, an appropriate refusal notice would be issued with regard to any exempt information, or if the cost of complying with a part or parts of a request exceeds the appropriate limit.
33. Finally, the Commissioner has found that the current two requests are not vexatious requests. That does not mean, however, that she would find further requests were not vexatious if the complainant was to bring another such complaint to her. The Commissioner considers each complaint on a case by case basis.

Right of appeal

34. 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

35. 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.
36. 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
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