



Appeal No. EA/2014/0221

IN THE FIRST-TIER TRIBUNAL

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM

Information Commissioner's Decision Notice FS50524168

Dated 4th August 2014

BETWEEN

Mr Eric Tripp

Appellant

And

The Information Commissioner

1st Respondent

And

Liverpool City Council

2nd Respondent

DECISION

Determined at an oral hearing at Liverpool on 21st September 2015

Date of Decision 20th November 2015

BEFORE

Ms Fiona Henderson (Judge)

Ms Ann Chafer

And

Dr Henry Fitzhugh

Representation

The Appellant represented himself

The Commissioner chose not to be represented at the oral hearing and made written submissions

The Council was represented by Mr Michael Jones (Manager Democratic Services)

Subject matter: s1 FOIA whether information is held

Decision: The Appeal is allowed

REASONS FOR DECISION

Introduction

1. This appeal is against the Information Commissioner's Decision Notice **FS50524168** dated 4th August 2014 which held that Liverpool City Council (the Council) did not hold further information pursuant to the request.

Information Request

2. The Appellant had raised wide ranging concerns about an Independent School (Liverpool College) with the Department of Education, Ofsted, the Independent Schools Inspectorate, Liverpool Local Safeguarding Children Board (LCSB) amongst others. Following concerns raised by him and others some issues were looked into by the LADO (local authority designated officer) and there were 2 Inspections by Independent Schools Inspectorate (one in conjunction with Ofsted). The Appellant understood that he was not the only person to have raised concerns and was disappointed that despite what he believed to be numerous issues being raised by various individuals with several organisations that the school continued to operate as before with no-one being held to account.

3. He wrote to the Council¹ on 17th May 2013 asking for:
“... the actual number of complaints and concerns made against Liverpool College [address given] to your department, from September 2008 to the present day. This is to include all complaints and concerns regardless of whether they are against the school, its governance or individual staff members. We are only requesting the actual number of complaints and concerns and not information regarding the content”.
4. The Council responded on 31st May 2013 stating that they had located 1 complaint within the scope of the request. This position was upheld in an internal review dated 13th August 2013 which took the scope of the request to be as set out in the Appellant’s letter of 19th July 2013 as including:
“all complaints whether they were received in writing or by telephone, referrals from other departments or organizations and from the public anonymous or not and any other professionals”.
5. On 10th December 2013 the Appellant complained to the Commissioner stating that to his knowledge there had been more complaints. During the Commissioner’s investigation the Council found a second complaint (notified to the Appellant on 17th June 2014).

The Appeal

6. The Appellant appealed on 8th September 2014 on the grounds that he believed at least 16 complaints had been made to various council departments during the time period (including 6 from himself, from 2 MPs, another set of parents, 6 referred to by Mr Adonis, the Registered Complaints Manager and Customer Care Team Manager, from 2006-2013 in a telephone call and others he has been made aware of by other parents). The Appellant provided email correspondence that suggested that the other set of parents had made complaints, and the involvement of an MP.

¹ He also wrote with the same request to the Council Education Department and the Council safeguarding department but since these all constitute the same legal entity for FOIA purposes the only response received was from Liverpool city Council.

7. The Council were joined by the Registrar on 8th October 2014. In their response they commented upon the documents provided by the Appellant. They explained that on 16th January 2012 a letter was received from Ms Luciana Berger MP, this was registered on iCasework as “MP Comment” as is the usual practice. Ms Berger had been contacted by a group of parents whose children attend or had attended Liverpool College. The Appellant was one of those named and the case was logged as Children and Social Care comment 187622 and was not identified using the search term “Liverpool College”. As the issue progressed 187622 was used to record the outcomes of this complaint. *“Therefore although it may be interpreted that there was more than 1 complaint due to additional letters/correspondence being received by the City Council, we only have on record 2 complaints relating to the school”²*.

8. The Appellant responded to the Council reiterating his version of the conversation with Mr Adonis and stating that although the other set of parents and he had had a joint meeting with Mr Said at the Appellant’s home, their complaints were separate and different and should have been treated as such. Considering that parent 2 also had a separate meeting with them and corresponded directly with them regarding his issues as did the Appellant, *“why is his complaint not included”³* He further questioned why the Council had no record of his former MP Mrs Jane Kennedy having contacted the Council re his complaints prior to her standing down from Parliament in 2010.

9. The case was listed for hearing on the papers on 23rd February 2015. The Tribunal was unable to determine the case as there was no clarity on the papers as to what searches had been done and the way that complaints were recorded and the way that the Council’s data was managed and stored. Additionally, it had insufficient information before it to determine the factual dispute relating to the conversation with Mr Adonis. Although the request was for the number of complaints rather than their contents, in light of what appeared to be the inclusion of more than one complainant in a single complaint the Tribunal needed to see the

² P58 Council’s response of 3.11.14

³ P62 OB

documentary evidence relating to these complaints. Since this contained personal data this was submitted on a closed basis and was withheld from the Appellant following a ruling pursuant to rule 14.

10. At the oral hearing on 21st September 2015, there was insufficient clarity as to the status of the LADO at the relevant date and whether it came under Council control and whether consequently his records should have been considered within scope. The Tribunal issued directions and written evidence and submissions were received from the Council. Both the Commissioner (who had not attended the oral hearing) and the Appellant were given the opportunity to comment on this additional material prior to the Tribunal determining the case.

Scope

11. We note that in his most recent submissions to the Tribunal⁴ the Appellant stated that:

“I believe that all complaints should be logged on a central, local, data base, so if there were a series of complaints about an individual or establishment this would be far easier to spot, rather than there being one with the LADO, another with OFSTED, another with the LEA etc., which may not show a pattern emerging... I think the way forward, in this case, might be to have another meeting with the present LADO.. to discuss the many complaints and issues I and others have raised over the last five years”.

12. This is outside the jurisdiction of the Tribunal which does not have the power to order meetings, the further investigation of complaints or methods of holding data. Section 1 of FOIA provides:

Any person making a request for information to a public authority is entitled: to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him”.

⁴ 14.10.15

The remit of this Tribunal therefore to determine on a balance of probabilities whether at the relevant date further information within the scope of the request was held and if so whether it should have been communicated to the Appellant.

Evidence

13. The Tribunal had regard to the original open bundle of documents, the bundle of documents provided by the Council pursuant to the February 2015 adjournment (including 4 witness statements and associated exhibits) and 2 additional bundles of documents from the Appellant. This included correspondence that the Appellant had been able to find relating to complaints that he had made and the fruits of the Appellant's subject access request to the Department of Education (redacted by them to exclude the personal data of others). Additionally there was a closed bundle which included material relating to complaints against Liverpool College and Liverpool Community College which was viewed by the Tribunal to ensure that the panel was able to determine whether multi source complaints constituted one or more complaints received.

14. At the oral hearing the Tribunal heard evidence from:

- The Appellant
- Mr Adonis
- Mr Ray Said (Current Local Authority Designated Officer)
- Mrs Mekki (Council Services Manager) and Mr M Jones (Democratic Services Manager) also provided some factual assistance to the Tribunal.

The Tribunal has had regard to all the evidence and submissions before it (whether individually referred to or not) in reaching its decision.

Records Management

15. Mr Adonis was the Registered Complaints Manager and Customer Care Team Manager from 2006-2013. His team handled complaints for Schools and FOIA requests. Complaints relating to Independent Schools in letter format were re-directed back to the School on receipt unless there was an area which warranted Local Authority intervention (e.g safeguarding) in which case it would be recorded on the case management system.

16. The initial search of iCasework pursuant to this FOIA request encompassed Adult Services and Supporting Early Years and Schools directorates. During the investigation by the Commissioner, the Council asked those Council employees named by the Appellant as having been involved directly in his complaints if they were aware of any complaints and this is how reference 187622 was located. This was found in Children Social Care which had not originally been searched on iCasework. The Council's education department records have also now been searched.

17. In 2011 Ms McGuire-Seery (manager of the Customer Feedback Team) undertook a review of the way that statutory and corporate "Have Your Say" complaints were managed. Following this, complaints about schools were moved from the Customer Care Services to Children's Services in January 2012, as it had become apparent that in some cases where a complaint was solely concerned with a school the Customer Care Team would forward these cases without recording it on iCasework. The only place complaints and concerns would be recorded was on the case management system. It is possible that the Council may have received telephone calls that were not handled as complaints. The Council doesn't record telephone calls which would lead to a complaint. If the complaint needed to be logged it would be done so via the case management system and the terms of the complaint agreed with the complainant.⁵

18. The data is backed up and the Council have had no instances of the data being lost. The retention period is 6 years from the closure of a case and no information in scope would have been deleted from iCasework at the date of the request. The keyword search would include sound-alike names to allow for variations in spelling. The actual letter would be scanned and as the search facility could not search the contents of the letters, these would have to be opened manually. The searches were of the title of the saved document but there was no formula or standard method of entitling these saved documents prior to the end of 2011 and might not include the word "complaint". Titles would not include references to

⁵ P98 letter from LCC to IC 29th April 2014

third parties but there would be a correspondence reference number to link other correspondence from the same source. Earlier cases were less detailed and if there was a change of contact details, it might break the chain.

19. From 2008-11 if a complaint or comment came in on paper and did not require opening as a formal complaint there was no record that it would be scanned in and no record of where it would be sent or of having received it. Scanned document titles might include the name of the complainant, the date of the correspondence, or the nature of the complaint⁶. 115 cases from 1.1.12-31.12.13 and 49 from 2011 were checked manually⁷. No other complaints/concerns within scope have been found despite these searches.
20. ⁸MP correspondence making a representation on behalf of a constituent is recorded as a comment (as per paragraph 8 of the Have Your Say Scheme). Although the initial letter from Ms Berger MP recorded complaints/concerns being made by a group of parents, these were not named hence their names did not appear in the title of the saved file neither did the title reference Liverpool College. Although it is apparent from the material before the Tribunal that included in the group of these parents was the Appellant and the other set of parents named by the Appellant as having definitely made complaints to the Council, none of this was apparent from the indexation/entitling of the file.
21. All the complaints/concerns that the Council have been able to trace, raised by the Appellant (apart from those covered by file 187622) have been filed under reference 144626. Within that file there are references to other letters that the Appellant had sent to the Council and other bodies at this time but they were not recorded as separate complaints.⁹ The current practice if the team receive correspondence relating to a school which is not a safeguarding issue, is that the parent is advised they should contact the school directly and the case is recorded

⁶ Oral evidence of Mr Adonis

⁷ Statement of Ms McGuire-Seery

⁸ Complaint 187622

⁹ Witness statement of Ian Knight Team Leader of the Customer Insight and Information Team since August 2013

on iCasework and closed once the letter was sent. If further correspondence is received referring to the same issue iCasework will be updated with further comments, this could result in more than 1 letter being recorded as a single complaint.

22. Emails received would be automatically deleted from the departmental email or the complaint inbox after 90 days unless it was forwarded and scanned onto iCasework. Occasional replacement of servers (most recently earlier this year) means that it is not now retrievable. The 28 day back up from the relevant date would also suffer from the replacement of the server.

The Local Authority Designated Officer (LADO)

23. The evidence was that whilst it would appear that complaints had been received by the LADO over the relevant time period, the records of the LADO were not checked at that time as the LADO came under the authority of the LCSB. From the oral evidence at the hearing and the additional evidence provided after the end of the oral hearing¹⁰ we are satisfied that the LADO came under the direct management control of the City Council with effect from 1 September 2013, the records were transferred around that time, however, that was after the relevant date for the purposes of FOIA.
24. At the relevant date the LADO came under the management control of the LSCB which in accordance with s13 Children Act 2004 was established by the City Council in Liverpool. It was, and remains, an independent partnership Board. The Council explained that LSCB was an arms-length statutory board of agencies (e.g. Police CAMHs, Ambulance, Fire) they meet as a board and in sub groups and staff are paid for out of a joint budget. The Liverpool LSCB worked out of the same building as the Council services and used the same IT system but their records were not held by the Council. Whilst the Council is a partner, the LSCB is independent and LSCBs are not considered to be public authorities for the purposes of FOIA. Whilst some administrative information may be held by the

¹⁰ 28th September 2015

local authority which would be subject to the provisions of FOIA (which was encompassed within the searches done by the City Council) this does not extend to include details of any cases or matters directed to the LSCB. From this we are satisfied that it has a legal status which is separate to the individual partners which make up that body and the substantive information held by the LSCB cannot be said to be held on the Council's behalf. At the relevant date the information held by the LADO under the auspices of the LSCB was therefore not within scope.

Complaints identified by the Appellant

25. The Appellant cited specific examples of complaints that he understood had been made to the Council and which were inconsistent with the Council's response of 2. The Tribunal addresses each of these issues in turn.

26. *2 complaints to LADO by the Appellant* – as set out the Tribunal is satisfied that in light of the status of the LSCB this was not information held by the Council at the relevant date.

27. *A complaint to Mr Ray Said Social Care Complaints Manager 2012 from Appellant and another set of parents.* This originated out of the complaint from a group of parents via Ms Berger MP and the documentation relating to this was recorded under the same “*comment reference 187622*”. The Appellant's case is that his concerns and those of the other parents were not the same and that since the initiating contact through the MP was from a group of parents (who included others not present at the meeting and were not copied into correspondence with the named individuals) that the MP concern should have been logged separately as should each of the concerns raised by the Appellant and the other named parents.

28. *Complaint to Mr Adonis 144626 initiated in April 2011.* This letter included more than one complaint and the evidence was that other subsequent correspondence was added to the same reference number. We accept from the Appellant that it raised new issues, the only points in common being the organisation and the name of the complainant. It is the Appellant's contention that these were wrongly

categorized as a single complaint. The Tribunal observes that it might be more accurate to state that there was one complainant relating to 144626 rather than that 144626 constituted a single complaint.

29. *6 other serious complaints against Liverpool College referred to by Mr Adonis during a phonecall.*

There was no dispute that a conversation had taken place. The Appellant's recollection was that in the context of the Appellant's complaint against Liverpool College Mr Adonis had said that he had 6 more on his desk that related to the same institution and similar matters. The Appellant recalled that he had mentioned 3 staff members by name and Mr Adonis had confirmed that they were involved.

30. Mr Adonis' evidence was that at the time of the telephone call, he had a large amount of correspondence which had not been read but had been sorted by establishment and was waiting to be triaged, allocated and case managed. He stated that:

"I told him I had six complaints with Liverpool College on them and had not got to them yet, when I read through them they were for Liverpool Community College and therefore the complaints were triaged to Liverpool Community College for response." Mr Adonis was sure that he would not have confirmed staff member names firstly because he had not yet read the files and secondly because this would be a breach of personal data.

31. The six cases referred to by Mr Adonis were logged as a single combined case (a multi-source complaint) and referred to Liverpool Community College NOT Liverpool College. The Tribunal takes into account the similarity between the names of the institutions, and the reasonableness that they could be confused, Mr Adonis' role in triaging the cases as part of allocation and that we have seen the papers relating to these complaints in accepting on a balance of probabilities that these were the complaints Mr Adonis was referring to during the telephone call.

32. The manner in which these complaints were first logged (as multiple source) demonstrated the short-fallings of the searching capabilities of the document storage system. These complaints were not revealed following a keyword search of Liverpool Community College as they had not been filed under that heading and the complaints were eventually located using the name of one of the sites used by Liverpool Community College.

33. *Complaints forwarded by Department of Education to LCC, the LADO and Children's Care Services Department.*

From the correspondence provided by the Appellant (pursuant to a subject access request to the Department of Education) it is apparent that complaints made by the Appellant and others (these documents are redacted and it is not always possible to follow the source of the complaint) were referred to other departments and organisations such as Ofsted, and the Independent Schools Inspectorate. These are separate legal entities from the Council and are therefore out of scope.

34. However, there is clear reference to safeguarding elements of a complaint being referred to Liverpool children's care services¹¹ (although subsequently Liverpool Safeguarding telephoned the Department of Education to indicate that they were not taking this any further).¹² This is part of the Council and if held would fall within the scope of the request. We accept the evidence that their records have been searched and no trace of this referral has been found. It is not apparent whether Children's Care Services opened their own case and logged it appropriately on iCasework or whether they passed it directly to e.g. the LADO without logging it onto iCasework. Even if the material was on iCasework it may have been recorded in such a way that it is not possible to find it through a keyword search. As set out above at the relevant date the LADO did not fall within the remit of the Council.

35. *Another named parent who was one of those whose representations were forwarded by Ms Berger MP.* We accept that this name has been searched and no

¹¹ Email20.1.10 bundle 4

¹² Bundle 4 telephone note 5.2.10

trace has been found. This name is not referred to in the case papers from complaints 187622 or 144626. The Appellant in his evidence clarified that whilst he believed that this parent had complained directly to the Council (in addition to contacting Ms Berger MP), he had not been able to confirm that it was the Council that were complained to rather than another organisation e.g Department of Education and at some point they had abandoned their complaint against the school.

36. *Jane Kennedy former MP made representations on the Appellant's behalf.* The Tribunal observes that she stood down in 2010 which was prior to the Appellant's formal letter of complaint of April 2011 which initiated reference 144626. The Appellant agreed that he could not be sure that she had specifically taken up his case with the Council (rather than e.g. the Department of Education or other organisations).

Sufficiency of the Search

37. In light of inadequacies of the records management as set out above which we accept, we are satisfied on balance that no other searches could reasonably be made. We find it worrying that no record was found of the referral of a complaint by the Department of Education to Children's Services. However, we accept that exhaustive manual searches have been made and if the name and organisation are not apparent from the document title there is no way to find it in electronic or hard copy file. The material held is therefore that filed under references 187622 and 144626.

Assessing the Number of complaints/concerns

38. Nevertheless we are satisfied that the Council have read the request too restrictively in responding with the answer "2". The Council's letter dated 4/7/12 in response to one of the parents at the meeting with Mr Said (included in reference 187622) lists 10 separate complaints, the letter is headed "complaints" and one complaint had 3 subheadings. Under the same reference number for the MP's comment were individual complaints made in writing and orally at meetings from 2 sets of parents. The entirety was filed under a comment even though by

the date of the letter of 4/7/12 it was apparent that this particular named parent was making complaints which were being adjudicated upon. The allegations made by the Appellant and the other set of parents were not limited to the same child or staff member or topic and we are therefore satisfied that it is misleading when being asked for the number and not the content to categorise this for FOIA purposes as 1 concern.

39. Similarly the complaint stored under 144626 had at least 4 elements and would appear to have been made in separate letters over time. The request did not ask for the number of complaints or concerns “logged as such” and the Tribunal has therefore considered the definition of “complaint or concerns.” The Council did not provide a comprehensive set of the Appellant’s letters of complaint therefore the Tribunal cannot number how many letters there were or be satisfied that it is sure how many separate issues were included in complaint 144626. The Tribunal is therefore satisfied that the Council need to recalculate the number of complaints/concerns identified in keeping with the Tribunal’s findings.
40. It is apparent that because of the way that the information has been logged it is now difficult to separate out a precise number of complaints. This has also not been assisted by repetition of the same complaint from the same complainants. In his attempts to obtain satisfactory answers the Appellant has addressed the same complaint to multiple individuals and departments within the Council as well as outside organisations which in turn might refer that same complaint to the Council. Multiple copies of the identical complaint from the same individual would not ordinarily constitute different complaints and a referral from another department or organisation would not necessarily constitute another complaint but rather reflects the route by which the complaint has made its way to the Council. However, the Appellant clarified on 19.7.13 that he wanted *all complaints whether they were received in writing or by telephone, referrals from other departments or organizations and from the public anonymous or not and any other professionals*. Which means that a case referred by another organisation (e.g. Department of Education) would count as a complaint for the purposes of this request even if it is a repetition of an existing or subsequent direct complaint.

41. In assessing the figure encompassed within the scope of the request the Tribunal is satisfied that each separate issue that requires an individual decision constitutes a complaint or concern and that it should be counted once per individual raising it insofar as it has been made directly to the Council. If it arrives by way of a referral from another organisation it should also be counted once per issue per individual per organisation.
42. The Tribunal understands that this means that there may be a repetition of complaints such that a single issue complained about by a single complainant might be counted multiple times if it has been referred to the Council by several different organisations. It is not the function of the Tribunal to comment on the usefulness of the information provided pursuant to a FOIA request, however, the Tribunal observes that there is no restriction upon a public authority providing a commentary to accompany disclosed information e.g. explaining that a figure includes 3 referrals of the same complaint from the same complainant but referred by 3 separate organisations.

Other Matters

43. The Tribunal is encouraged to hear that as a result of the issues raised during this case the Council has identified a number of measures to be implemented to further enhance the casework management systems, including extension of the fields from which iCasework searches retrieve results and the use of semi colons to allow multiple surnames to be included in the customer box to denote a multi-source complaint.
44. Additionally we note that by way of assistance and notwithstanding their position that it was not in scope at the relevant date, the current Local Authority Designated Officer (LADO) has undertaken a review of all data transferred to the City Council relating to the LADO based on the terms of the Appellant's original request to the City Council and the number of complaints on file has been disclosed to the Appellant

Conclusion

45. For the reasons set out above we allow the appeal and require the Council to provide a recalculated number of complaints/concerns following the method set out in paragraph 41 above within 35 days. Our decision is unanimous.

Dated this 20th day of November 2015

Fiona Henderson

Tribunal Judge