

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 April 2010

Public Authority: Richmond Adult Community College
Address: Parkshot
Richmond
TW9 2RE

Summary

The complainant made a request to Richmond Adult Community College (the "College") on 26 March 2009 for minutes of meetings for the year 2007. The College refused the request for information as it deemed the request vexatious under section 14 of the Act and furthermore stated that to comply with the request would exceed the cost limit under section 12 of the Act. The College took into account a series of events leading up to the request on 26 March 2009, and deemed this request vexatious under section 14(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner has considered this request in the context and background in which it was made and has decided that the College correctly applied section 14(1) of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made a request on 26 March 2009 for minutes of meetings for the year 2007.
3. As the complainant did not receive a response from the College, she made a complaint to the Information

Commissioner's Office (ICO) on 14 April 2009.

4. After being contacted by the ICO, on 15 June 2009 the College wrote to the Commissioner to explain that it had now written to the complainant to seek clarification as to which minutes in particular she wished to obtain for the year 2007. It indicated that it required this clarification as the request was so wide it was likely it would exceed the cost limit under section 12 of the Act.
5. On 16 June 2009 the complainant wrote to the College to confirm that it was in fact all minutes for the year 2007 that she wished to obtain. The complainant also made a further linked request on this date.
6. On 9 July 2009 the College responded to the complainant's request of 26 March 2009 in relation to the minutes for 2007. It refused to comply with the request as it deemed the request to be vexatious under section 14(1) of the Act and furthermore stated that to comply with the request would exceed the cost limit under section 12 of the Act. It provided no specific response to the further requests made by the complainant in her letter of 16 June 2009 to the College.

The Investigation

Scope of the case

7. On 11 July 2009 the complainant made a formal complaint to the ICO as she was dissatisfied with the response she had received to her requests for information.
8. Although the College applied section 12 and 14(1) in order to refuse to comply with the complainant's request, for the reasons explained in the analysis section below the Commissioner has focused his investigation on whether the College correctly applied section 14(1).
9. The Commissioner has not considered the further requests made on 16 June 2009 any further. The College focused upon the earlier request, which the complaint did not dispute. Furthermore the Commissioner clearly set out the scope of his investigation being limited to the request of 26 March 2009 in his initial letter to the complainant dated 27 November 2009.

Chronology

10. On 23 September 2009 the Commissioner wrote to the College to obtain its submissions in relation to its handling of the complainant's requests in advance of the complaint being allocated to a case officer. In particular he sought the College's full rationale behind its decision to refuse to provide the requested information on the grounds it was vexatious.
11. On 21 October 2009 the College responded to the Commissioner and provided its submissions in support of its application of section 14(1) and section 12 to the first request.

Background

12. The College has outlined the wider context and history which cumulated in the FOI request of 26 March 2009.
13. The College explained that the request of 26 March 2009 relates to an ongoing dispute the complainant has had with the College since October 2006 relating to her attendance on a specific course. It advised the Commissioner that during the course of this dispute the complainant had made unsupported allegations about the personal relationships and unprofessional conduct of staff. It also reported that the complainant had approached a member of staff, outside of college grounds, in a threatening manner.
14. On 11 January 2007, the complainant wrote to the Executive Director Quality & Client Services at the College to put forward her version of events relating to the ongoing dispute. The Executive Director referred the letter to the College Principal.
15. On 2 April 2007, the Student Service and Quality Manager wrote to the complainant to advise her that the College had convened a panel to investigate her complaint. She explained the outcome of the investigation and notified the complainant that she had the right to appeal against this decision to the Governing Body of the College.
16. A solicitor wrote to the College on 8 May 2007 upon the complainant's instructions. The letter again put forward the complainant's version of events relating to the ongoing dispute.

17. On 26 June 2007 the Chair of the Governing Body responded to the issues raised in the letter of 8 May 2007.
18. On 6 May 2008 the LSC wrote to the College Principal to inform her that the LSC had received a complaint from the complainant.
19. On 30 September 2008 the LSC wrote to the College and the complainant setting out the draft findings of the investigation. The LSC asked the complainant to provide any comment she wished to make which would be considered before the final outcome was communicated. The complainant did not make any further comment and the final outcome was communicated to the College on 14 October 2008. Whilst the LSC did make some suggestions as to how the College could have handled some issues differently, the substantive complaints made by the complainant were not upheld.
20. The College therefore believes that all issues between it and the complainant have been properly addressed. It stated that it followed proper procedures throughout and this can be supported as its actions were reviewed by the Chair of the Governing Body and the LSC.
21. The College has referred to other correspondence and contact between itself and the complainant which led up to the making of the request on 26 March 2009. The Commissioner is aware that there were 9 letters from the complainant to the College, and 8 letters from third parties on behalf of the complainant to the College between October 2006 and the making of the request in March 2009. The Commissioner is also aware that there were numerous telephone calls made by the complainant to the College however the College has not kept telephone records of this contact.

Analysis

Procedural matters

Section 14

22. Section 14(1) of the Act states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

The full text of section 14 is available in the Legal Annex at the end of this notice.

23. The Commissioner issued revised guidance entitled “Vexatious or repeated requests” in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below:
- i. Could the request fairly be seen as obsessive?
 - ii. Is the request harassing the authority or causing distress to staff?
 - iii. Would complying with the request impose a significant burden in terms of expense or distraction?
 - iv. Is the request designed to cause disruption or annoyance?
 - v. Does the request lack any serious purpose or value?
24. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However it states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the above headings.
25. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024), at paragraph 11 stated that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
26. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:
- “ The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one”

In doing so the Commissioner can therefore consider the

context and history of a request in addition to the request itself in relation to one or more of the five factors listed in paragraph 25.

27. The Commissioner has considered whether the College has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case. In doing so he has taken note of all of the correspondence and contact between the complainant and the College from October 2006 up to the date of the request.

Could the request fairly be seen as obsessive or manifestly unreasonable?

28. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? The Commissioner's guidance suggests that;

"It will be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.'

29. In this case, whilst the Commissioner is not aware that the complainant has made previous FOI requests, the College has outlined the wider context and history which cumulated in the FOI request of 26 March 2009 set out at paragraphs 12 to 21 above.
30. The College believes that the request of 26 March 2009 was made in an attempt to reopen issues that had already been fully debated and considered which therefore demonstrates that it can fairly be seen as obsessive. Whilst the number of letters leading up to the request do not appear to be excessive over the time period in question, taking this into account along with the telephone calls and other contact referred to by the College, the Commissioner does consider that the request of 26 March 2009 would be seen by a reasonable person as an attempt to reopen issues that had been concluded.

31. The request was for all minutes for the year 2007. As 2007 is a key period in the dispute between the complainant and the College prior to the dispute being reviewed independently, the Commissioner considers that it is highly likely that the complainant wished to obtain any information which may be contained within those minutes relating to her dispute with the College which was ongoing in 2007.
32. The Commissioner is also mindful of the Tribunal decision in Welsh EA/2007/0088. In this case the complainant attended his GP with a swollen lip. A month later, he saw a different doctor who diagnosed skin cancer. The complainant believed the first doctor should have recognised the skin cancer and subsequently made a number of complaints although these were not upheld by the practice's own internal investigation, the GMC, the Primary Care Trust or the Healthcare Commission. Nonetheless, the complainant addressed a four page letter to the GP's practice, headed 'FOIA 2000 & DPA 1998 & European Court of Human Rights' which contained one FOI request to know whether the first doctor had received training on face cancer recognition. The GP applied section 14(1). The Tribunal said:

"...Mr Welsh simply ignores the results of 3 separate clinical investigations into his allegation. He advances no medical evidence of his own to challenge their findings.....that unwillingness to accept or engage with contrary evidence is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other...it is the persistence of Mr Welsh's complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious...." (paras 24 &25).

33. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. In this case taking into account the context and background to the request, and the fact that the dispute between the complainant and the College was independently reviewed by the College's Governing Body and the LSC, the Commissioner considers that the request can fairly be seen as obsessive.

Is the request harassing the authority or causing distress to staff?

34. The College has explained that the member of staff mentioned at paragraph 13 above has reported that she felt threatened by the complainant on a number of occasions leading up to

the request. Furthermore the College stated that the outcome of the LSC investigation found that this was the case.

35. The College also provided a further example of the complainant causing distress to a member of staff leading up to the making of the request. As described at paragraph 13 above the Head of Quality (the then Student Service and Quality Manager) wrote to the complainant. When the complainant replied to the Head of Quality, the envelope was addressed to "Head of Quality (Ha Ha Ha)". The College confirmed that the Head of Quality reported that she found the mocking reference to her job title distressing.
36. The College also suggested that that the nature of the correspondence and telephone calls leading up to the making of the request, referred to at paragraphs 12 to 21 above, demonstrates that the request of 26 March 2009 did have the effect of harassing the College.
37. The Commissioner considers that the College has provided sufficient evidence that the complainant's conduct leading up to and including the making of the request caused distress to staff. Furthermore taking into account all of the previous contact between the complainant and the College and the fact that the dispute had been reviewed externally, the Commissioner considers that the request was a continuation of the complainant's focus on the refusal to be allowed on the course. This attempt to keep reopening that issue did have the effect of harassing the College.

Would complying with the request create a significant burden in terms of expense and distraction?

38. The College has estimated that for 2009 it is likely to hold 53 sets of Governing Body minutes, 62 sets of Executive minutes, 36 sets of College Committee minutes and 242 sets of Departmental minutes. This therefore totals approximately 393 sets of minutes for 2009. The College however stated that this estimate was based upon regular meetings and that it is highly likely there were additional ad hoc meetings and therefore the actual number of minutes held is probably higher. Furthermore the College explained that its structure had simplified significantly since 2007 and therefore again this would indicate that the number of meetings and minutes held is likely to be much higher for 2007 compared to 2009.
39. The College therefore concluded that it would not be

unreasonable to estimate that the total sets of minutes held for 2007 is likely to be approximately 470.

40. The College undertook a sampling exercise in order to obtain an indication as to how long it would then take to search for and retrieve the minutes held. It stated that in the case of the minutes of one meeting of the Governing Body, retrieval took a total of five minutes. It also undertook to search for and retrieve a particular set of Departmental minutes it believed may be held. However within a self imposed time frame of 10 minutes the College was unable to determine whether those minutes had been retained, archived or destroyed. Further work would therefore be necessary to determine this. Given the number of sets of minutes it is likely to hold for 2007, because of the wide scope of the request the College concluded that the time required to comply with the request would be significant in terms of expense and distraction to staff.
41. The College explained that the work would require the involvement of staff members from a number of areas of the College, including Governance, Executive, Management, Quality, Curriculum, College Information Services, Finance, HR and most likely others. It clarified that even to establish which meetings were held in 2007 would be likely to involve significant time implications from all areas of the College due to the wide scope of the request.
42. It explained that it is a small College, with a relatively small number of full-time staff, both academic and business support. It stated that to divert many of these staff from the normal exercise of their responsibilities for what could be substantial periods of time, would represent a significant distraction to staff, and inevitably divert them from the roles the College requires them to perform. It stated that this would be very likely to have an adverse impact upon the service that the College provides to its learners and other stakeholders.
43. Upon consideration of the submissions provided by the College set out above, the Commissioner considers that the wide scope of the request would impose a significant burden upon the College in terms of expense and distraction. Furthermore the Commissioner notes that the College tried to clarify if there were any particular minutes the complainant wished to obtain in an attempt to mitigate the burden the request would impose. The complainant however confirmed

that her request was indeed for all minutes for the 2007 period.

44. The College also asserted that taking into account the wider context of the request; it believes that by complying with this request would be very likely to lead to a significant amount of further correspondence based upon its dealings with the complainant.
45. The Commissioner is mindful of the Tribunal decision, *Betts v Information Commissioner EA/2007/0109*. Paragraph 34 of that decision stated that, "albeit it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources". Although in the case in question complying with the request would not have been simple the latter part of paragraph 34 is relevant.
46. The Commissioner accepts, taking into account the background and context of the request, that responding to the complainant's request may have generated further correspondence thereby increasing the significant burden upon the College.

Is the request designed to cause disruption or annoyance?

47. The College acknowledged that the complainant has not explicitly stated that she wishes to cause disruption or annoyance however the College believes that the threatening tone of the complainant's correspondence and contact with the College, and in light of the fact that the dispute between itself and the complainant had been independently reviewed at the time of the request by the LSC, it believes that the request was designed to cause continued disruption to the College.
48. The Commissioner has considered the College's submissions but finds that there is insufficient evidence to enable him to conclude that the request was designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

49. The College has argued that as the complainant has failed to specify which particular minutes she may require, for example so that she can satisfy herself that the College properly recorded its business conduct in the year 2007, this indicates that the request has no serious purpose or value.
50. The Commissioner considers that even though the complainant was unwilling to refine her request to minutes of particular meetings or types of meetings this does not in itself show that the request had no serious purpose or value and is therefore unable to conclude that this has been demonstrated in this case.

Commissioner's Conclusion

51. As explained previously it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1) on the basis of the three factors mentioned above. Having considered all of the above the Commissioner believes that section 14(1) of the Act was correctly applied in this case. As he has concluded that section 14(1) has been applied correctly he has not gone on to consider the College's application of section 12.

The Decision

52. The Commissioner's decision is that the College correctly applied section 14(1) as the complainant's request can be correctly categorised as vexatious under the provisions of the Act.

Steps Required

53. The Commissioner requires no steps to be taken.

Right of Appeal

54. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk
Website: www.informationtribunal.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 26th day of April 2010

Signed

**Lisa Adshead
Group Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”