

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 August 2017

**Public Authority:** Weymouth College  
**Address:** Cranford Avenue  
Weymouth  
Dorset  
DT4 7LQ

#### Decision (including any steps ordered)

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1. The complainant has requested from Weymouth College (the College) information relating to all transaction details (procurement card) carried out by the Principal during a three year period.
2. The Commissioner's decision is that the College was not entitled to refuse to comply with the request under section 14(1) of the FOIA. Therefore, the Commissioner requires the College to take the following steps to ensure compliance with the legislation:
  - Issue a fresh response to the request that does not rely on section 14(1).
3. The public authority must take these steps 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

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4. On 8 September 2016 the complainant wrote to the College and requested information in the following terms:

*"Could you provide me a breakdown of the Principal's procurement card transactions for the three year period from 1st August 2013 to 31st July 2016? Can you provide the information at individual transaction level and include for each transaction the following information please.*

*1) Date of transaction*

*2) Amount of transaction*

*3) Organisation/ Company/ Business with whom the transaction was conducted*

*4) Nature of expenditure (e.g. train travel, stationery)*

*5) Purpose of expenditure"*

5. On 21 September 2016 the College responded. It asked the complainant to clarify a part of her request, asking if she required the following:

*"All transactions carried out on the procurement card allocated to the Principal, regardless of the department of budget who made use of the card to complete that transaction or only transactions carried out by the Principal directly."*

6. On 22 September 2016 the complainant clarified her request and asked to be provided *with "all transactions attributed to the Principal's procurement card whether directly or indirectly carried out by the Principal."*

7. On 29 September 2016 the College refused the request under section 14 of the FOIA as it considered the request (for procurement card transactions) vexatious.

8. On 30 September 2016 the complainant asked for an internal review of the handling of her request for information.

9. On 6 October 2016 the College acknowledged receipt of the internal review request.

10. On 31 October 2016 and 21 November 2016 the complainant chased the College's response and asked it when the review would be completed and the outcome provided.
11. On 22 November 2016 the College responded and stated its decision to decline the request had not changed.
12. On 2 December 2016 the complainant wrote to the College and expressed her dissatisfaction with its response. She asked the College to confirm whether the internal review had been conducted and the original decision to decline the request had been upheld.
13. On 10 December 2016 the complainant wrote to the College expressing her dissatisfaction with its lack of response to her question. She said that she assumed the internal review had been concluded and that it upheld its decision to refuse the request under section 14 of the FOIA.
14. On the same day the College responded. It confirmed completion of the internal review and its decision to withhold the information had been upheld.
15. On 11 December 2016 the complainant acknowledged receipt of the College's response.

### **Scope of the case**

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16. The complainant contacted the Commissioner on 19 January 2017 to complain about the way her request for information had been handled.
17. The Commissioner considers the scope of the case is to determine whether the request is vexatious and if the College is entitled to rely on its application of section 14(1) of the FOIA.

### **Reasons for decision**

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#### **Section 14 – vexatious requests**

18. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) though considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.<sup>[1]</sup>

19. The Tribunal commented that 'vexatiousness' 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. It also made clear that the decision of whether a request is vexatious may be based on the circumstances surrounding the request.
20. 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.
21. 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).*
22. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
23. 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 requests. <sup>[2]</sup> 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.

<sup>[1]</sup>GIA/3037/2011

<sup>[2]</sup><https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

24. In order to reach a decision on whether this request is vexatious, the Commissioner has obtained submissions from the College to understand the circumstances surrounding this request.

### **The College's position**

25. The College stated to the Commissioner that it appreciates and acknowledges that there is a public interest in public body spending. The College said that it accepts its responsibilities under the FOIA but it considered this request to be vexatious. Therefore, it declined to comply with the request for a number of reasons.
26. The College reported that the request ultimately arises from a grievance submitted against the College by another individual (referred to in this notice as [named individual]).
27. To support its view that there was a connection between the complainant and the [named individual], the College said that within the grievance/complaint investigation there had been an item which related to transactions on the Principal's procurement card. It also said that there were significant actions within a timeframe which seemed in its view, more than a coincidence.
28. The College informed the Commissioner that the investigating officer had received further evidence from [named individual] which related to his grievance/complaint in a statement dated 6 September 2016. It added that two days later the request for information was received from the complainant. The College asked the complainant for clarification of her request and explained its reasons. It said that *"the procurement card assigned to the Principal is used by multiple staff and departments across the college to complete transactions which require a card payment."* The College added that it required the complainant to clarify her request *"because the College has withdrawn procurement cards for general use to aid controlling spend across departments."*
29. A further action which the College considers to be more than a coincidence is that the complainant had quoted two monetary figures from a previous FOIA request, submitted by another individual on 20 July 2016. The College stated that this was a request for similar information and that this information was disclosed. It added that the College's response is available on the "whatdotheyknow" website and that the complainant had seen this and had quoted it within her correspondence to the College.

30. The College reported another action within a timeframe which it believes is more than a coincidence. It said, this is that the Principal and SLT colleagues know that members of [named individual's] college friendship group had stated publicly (during staff meetings) that FOIA requests had been made to the College relating to the raised issues by [named individual] together with comments related to threats of *"going to the press"*.

### **Unreasonable persistence**

31. The College stated that it considered the criteria for vexatious requests applied and said that the timing of it was aimed to *"interfere with an ongoing internal investigation."* The College declined the request due to what it believed to be reasonable suspicions that there were links to the grievance/complaints raised by [named individual]. It added that [named individual] had continued to pursue the College for full disclosure relating to the investigation into the Procurement card usage throughout.

### **Personal grudge**

32. The College is of the view that this action was part of a personal grudge against the Principal. The College believes that this was designed by [named individual] with the support of members of his family in order to put pressure on the College. Also, to cause disproportionate or unjustified level of disruption, irritation or distress to the College and to certain members of staff.

### **Burden on the authority**

33. The College considered the complainant's request was also aimed to create a significant burden on the College, specifically, in terms of expense and distraction, by detracting from the internal investigations. It believed that the request was made to cause disruption or annoyance and harassment to the College and to its staff. In particular, personally to the Principal in the context of accusations made by [named individual] in his additional submission to the investigatory panel of 6 September 2016.

### **The complainant's view**

34. The complainant has not provided specific arguments or evidence to the Commissioner as to why the request should not be defined as vexatious. She has however expressed her belief that there are other reasons for the information being withheld which she said made her more suspicious and determined for the information to become publically available.
35. It is evident to the Commissioner that the complainant has concerns about the Principal's spending. She understands that the complainant wishes to have the information made available to the general public and that this was her motivation for the request.

### **The Commissioner's position**

36. The College supplied the Commissioner with the withheld information (a spreadsheet of the breakdown of transactions) and with supporting documents relating to circumstances around this case. A copy of documents supporting the College's belief that there is some connection or relationship between the complainant and the internal case (grievance/complaint investigation) had also been supplied to the Commissioner.
37. In terms of the College's reliance on section 14 to the request, the Commissioner has assessed the value of the information and whether it was reasonable to ask for this. She accepts that there is a public interest in public authority spending and the Commissioner considers this would lend weight to the view that it was reasonable to make the request
38. The Commissioner considers there is substantial evidence to suggest there is a link between the [named individual] and the complainant. Although there had been investigation proceedings (grievance/complaint) taking place, however, this does not mean that any requests which relate to the subject matter (or else have been made by a requestor who is connected to the proceedings) must be automatically classed as vexatious.
39. It is not unrealistic to expect that individuals who have a specific interest in such proceedings may seek to use their rights under the FOIA to seek access to relevant information where, in all the circumstances, it is reasonable to do so.

40. Whilst the Commissioner accepts that the complainant's previous correspondence is tenacious, this correspondence is not necessarily indicative of an unreasonable person. Furthermore, there is no evidence that the complainant has made any previous requests to the College.
41. In the circumstances of this case, the Commissioner notes that there had been a number of exchanges between the College and the complainant beginning from the date of the request until December 2016. Most of this had been correspondence from the complainant chasing the internal review outcome by the College. There had not been any examples that demonstrated the complainant had been in any way abusive or had used intemperate language.
42. The Commissioner accepts that the College believes that the request forms part of a personal grudge against the Principal. However, she has not found any specific evidence of this and deems this claim as an opinion by the College. There is also limited evidence provided by the College to suggest that the request is part of a concerted campaign to disrupt its daily business.
43. The Commissioner considers that compliance with the individual request in isolation may not have been overly burdensome. The Commissioner does appreciate however why the College considers that the request is an extension of the collective burden of correspondence generated by the grievance which the College has handled for some time. She acknowledges that the request would cause further disruption to the College and to its staff and impose a burden on the limited resources of the College.
44. The fact that this case contains an indicator in regards to identifying vexatious requests, however, does not necessarily mean that this request is vexatious. The Commissioner has considered all the circumstances of the case in reaching a decision and finds the case is finely balanced. In her view though, the College's principal arguments – namely the link between the complainant and the [named individual], and the burden imposed by the request - have failed to demonstrate that the request is manifestly unjustified, inappropriate or an improper use of a formal procedure.
45. Significantly, the Commissioner considers that the College has not been able to show either that the making of the request itself was patently unreasonable or evidenced a pattern of behaviour that could be deemed vexatious. Therefore, the Commissioner's decision is that the College is not entitled to rely on section 14(1) of the FOIA to refuse to comply with this request.



## **Other matters**

46. The Commissioner's guidance explains that when a public authority receives an internal review request, it should ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
47. The Commissioner notes that in this case the College took 38 working days to respond to the internal review request. The Commissioner would advise the College to follow her guidance on this matter to ensure good practice when dealing with internal review requests.

## Right of appeal

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48. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.

50. 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** .....

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**