

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 16 December 2010

**Public Authority:** Department for Education  
**Address:** Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

### Summary

---

The complainant requested information relating to a study carried out into elective home education known as 'The Badman Report'. The public authority refused to disclose the requested information relying upon section 14(1) of the Freedom of Information Act 2000. The Commissioner considers that the public authority applied section 14 appropriately. However he finds that the public authority has breached section 17(5) 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.

### Background

---

2. In January 2009 the public authority commissioned Mr Graham Badman to assess whether the current system of supporting and monitoring home education was effective. On 11 June 2009 Mr Badman's independent report: *'Review of elective home education in England'* (the Badman report) was published. This report set out his findings which included the following statement: *'the number of*

*children known to children's social care in some local authorities is disproportionately high relative to the size of their home education population'* (paragraph 8.12). It also contained recommendations for supporting all home-educated children so that they receive a good education and stay safe and well.

3. As part of the evidence gathering phase of the Badman report, local authorities were invited to respond to a questionnaire which asked a number of questions about their procedures and practices in relation to monitoring and supporting home education.
4. It is this questionnaire and its responses that the complainant is requesting information about.

## The Request

---

5. On 27 August 2009 the complainant submitted the following request:

*'In the Explanatory (sic) Note 20 August 2009 released to Shena Deuchars and Louise Thorn  
<http://www.whatdotheyknow.com/request/ba...>  
it is stated that 'in one LA, 55% of their EHE children is known to social care.'  
Please supply the name of the LA concerned.*

*It is also stated that*

*'\*Two reviews recommended that procedures for monitoring and supporting all home educated children should be strengthened. The other two recommended that procedures for monitoring and supporting home educated children where there are welfare concerns, should be strengthened.'  
Does this mean two review responses or is it referring to previous reviews, (have there been any) i.e. not the 2009 one?*

*Please also supply the names of the 6 LAs who claim that the number of EHE children receiving a suitable education 'was 50% or under'.*

*Also the names of the,*

*'Two LAs estimated there was no education provision in over 25% of the children on their caseloads. Four LAs said that there was education provision in over 25% of the children on their caseloads. Four LAs said that there was education provided in all of their caseloads.'*

6. On 13 November 2009 the public authority responded. It explained it was applying section 14(1) to several requests made by the complainant, i.e. those on 28 July, 27 August (2 emails), 28 August, 9 September, 10 September, 19 September (2 emails), 25 September, 26 September and 26 October 2009 (2 emails).
7. In light of various communications with the public authority, on 20 December 2009 the complainant contacted the Commissioner to complain that the public authority had not carried out an internal review.
8. On 12 January 2010 the Commissioner contacted the complainant. He advised her that she would need to go through the public authority's internal review procedure before he could consider her complaint. The complainant then contacted the public authority on the same day and requested an internal review.
9. On 10 March 2010 the public authority confirmed that it had carried out an internal review. It confirmed that it was upholding its decision to apply section 14(1). It also apologised for the delay in carrying out the internal review.

## **The Investigation**

---

### **Scope of the case**

10. On 20 December 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The public authority appears to have inflated the number of requests submitted by the complainant.
  - The complainant is acting alone.
  - The need for the requests was solely because of the public authority's deficient report and subsequent ad hoc release of information.
  - The complainant's requests were made on average every 9 days.
  - The complainant had to submit 10 requests for internal reviews because the public authority had not met the 20 working days time limit, which generated extra correspondence.
  - External factors meant that the complainant had to make several requests (i.e. the closing date for consultation on the recommendations, and the fact that the Government had

announced that legislation would be introduced in the Queen's Speech).

- The Select Committee subsequently announced that submissions had to be made by 2 September 2009. Therefore there was a limited timescale for the complainant to request the information.
- The public authority agreed that the requests had serious value and purpose.
- The public authority alleged that the complainant had harassed its staff but has also written to the complainant saying that it was not suggesting that she had participated in any vilification of the author of the report.
- The public authority does appear to be accusing the complainant of being part of a campaign to inundate it with FOI requests about elective home education.
- With regard to the Commissioner's tests regarding vexatious requests: the complainant has not got an unreasonable fixation on an individual member of staff and the public authority had not produced any evidence of this; the requests submitted by the complainant did not contain any accusations/complaints and the public authority has not suggested that they did; the complainant disputes that her requests imposed a significant burden on the public authority; and the requests were made because the public authority had produced a report which failed to provide robust evidence for its recommendations, when a more informative report would have obviated the need for information from the complainant.
- As the report had selectively quoted qualitative evidence this meant that home educators had to carefully scrutinise anything the public authority placed in the public domain.
- The information disclosed in response to earlier requests for information showed that a second initially undisclosed local authority survey had been carried out – this appeared to be the basis for a particular ('notorious') claim in paragraph 8.12 of the report.
- The Commissioner should reject the public authority's application of section 14.

## Chronology

11. Initially there was an exchange of emails between the Commissioner and the complainant about this complaint and another associated complaint which was already being dealt with by the Commissioner.
12. On 26 July 2010 the Commissioner contacted the public authority, asking it to clarify which particular request for information had triggered its application of section 14.

13. On 6 August 2010 the public authority clarified that it was one of the requests dated 27 August 2009 that had triggered its application of section 14.
14. On 13 August 2010 the Commissioner contacted the complainant, confirming that her complaint had been allocated to a caseworker.
15. On 5 October 2010 the public authority contacted the Commissioner providing further information about its application of section 14.

## Analysis

---

### Substantive Procedural Matters

16. Section 14 provides that a public authority is not obliged to deal with a request for information if it is vexatious.
17. There is no single test for deciding whether a request might be considered vexatious. Therefore, each case has to be judged on its own merits, taking into account all of the circumstances of the request.
18. In his guidance entitled 'Vexatious and repeated requests' the Commissioner has outlined a list of criteria to consider when deciding whether a request for information is vexatious or not.
  - Could the request fairly be seen to be obsessive or manifestly unreasonable?
  - Is the request harassing the authority or distressing the staff?
  - Would complying with the request impose a significant burden in terms of expense and distraction?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?
19. It is not necessary for all of the above to apply. However, it is the Commissioner's view that at least one must apply and that, generally, the more that apply the stronger the case will be. In this particular case, the Commissioner accepts that the arguments submitted by the public authority to support its use of this exemption can apply to more than one of the criteria.
20. In addition, the Commissioner will consider the wider context and history of the request. In some cases, although a request may not be vexatious on its own, when considered in context it may form part of a wider pattern of behaviour which renders it vexatious. However, the

Commissioner recognises that it is the request and not the requester which must be vexatious in order for the exemption to apply.

***Could the request fairly be seen to be obsessive?***

21. In the Commissioner's view, the test to apply is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In assessing whether a request can be deemed obsessive or manifestly unreasonable, a public authority may take into account previous knowledge it has of the requester as well as previous grievances, disputes or complaints involving the requester.
22. The public authority explained that it considered that the request was obsessive in nature. This was because of information already disclosed to the complainant and the various opportunities she had had to register any concerns about the Badman report including the consultation and Select Committee hearings.
23. The public authority argued that the pursuit of information which the complainant already had could be described as both repetitive and ill-focused. An example of this was where the complainant, in her blogged letter of 26 July 2009 to UK Statistics Agency, referred to the release of an Annex containing information about the estimate of home-educated children known to Social Services. She then submitted a request to the public authority on 27 August 2009 for the same information. However, it appeared that the complainant had already seen this information and was clear about its content. This could be inferred from an extract from her letter of 26 July 2009 which the public authority provided to the Commissioner.
24. The public authority also pointed out that the complainant had written to Sir Gus O'Donnell, Head of the Home Civil Service, to complain about the Badman report. She had received a personal reply from David Bell, Permanent Secretary of the Department for Education in which he told her she had made a very serious allegation about the conduct of Mr Badman (the author of the Badman report). He also explained that he was satisfied that the Badman report had honestly and fairly represented the wide variety of views of those who had submitted evidence. The complainant posted this reply on her blog on 28 July 2009.
25. The public authority explained that despite this response at the very highest level the complainant continued to denigrate the Badman report, its Chair and the public authority itself generally on

*WhatDoTheyKnow.com* and various blog postings. The public authority provided the Commissioner with an example of this.

26. In view of all of this, the public authority explained that it also felt that there was nothing more it could have done to satisfy the complainant regarding the probity of the Badman report or its author.
27. The public authority explained that this view was supported by the fact that the proposed legislation had been dropped prior to the election and the administration and government policy in relation to home education has since changed.
28. The complainant also posted hostile references to staff on *www.blogger.com/comment*, targeting one member of staff in particular and referring to her as 'Dirty Penny'. The public authority provided the Commissioner with examples of this.
29. The public authority contended that, taking all of the above into consideration, as well as being obsessive this would also diminish the extent to which her request had a serious or proper purpose.
30. Taking all of the above into account the Commissioner accepts that the request could reasonably be seen as obsessive.

***Is the request harassing the authority or distressing the staff?***

31. When determining whether a request has the effect of harassing a public authority or causing distress to its staff, the Commissioner's guidance states that the focus should be on the likely effect of the request seen in context, not on the intention of the requester. It is the Commissioner's view that the relevant question is whether having to deal with the request would be distressing or harassing, regardless of the subject of the request.
32. The Commissioner considers that relevant factors include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
33. The public authority explained that the complainant had made accusations against it. For example, on 10 September 2009 the complainant alleged that the public authority intended to delay dealing with her request. On 19 September 2009 she complained about an earlier response she had received and included a suggestion that the public authority should redeploy staff to avoid being seen as obstructive or stonewalling. The complainant also alleged that the



- public authority had intentionally misunderstood and had provided misinformation. On 25 September 2009 the complainant accused the public authority of lying when it said it did not hold some information.
34. Further, the Commissioner notes that in the complainant's complaint to him, she alleges that the public authority appears to have inflated the number of requests sent to it. However, on further investigation, the public authority explained that on 14 June 2009 the complainant had also sent a letter to the then Minister for Education (Ed Balls) twice by email. It also received a hard copy of the same letter. The letter raised concerns about the probity of the report and alleged that the Minister and the Government at the time had been let down by the poor quality of it.
  35. The public authority also pointed out that there were various forums available for people to air their views on elective home education, for example contributing to the Badman report. It pointed out that, of ten responses sent to the complainant, six provided the requested information (including one partial disclosure); two responses explained that the information was not held; and one response explained that the information was reasonably accessible by other means.
  36. The public authority also explained that of the 107 requests received by it between 11 June and 29 October 2009 about elective home education, 74 (69%) were from a group of nine FOI requesters, including the complainant. The public authority went on to state that in several instances it appeared that the complainant was acting in concert via the website *www.WhatDoTheyKnow.com*.
  37. The public authority also pointed to a blog from the complainant of 12 May 2010 in which she expressed a hope that a particular member of staff would lose his job. This blog also linked into a post from Christmas 2009 which was a rewrite of the song '*12 days of Christmas*'. It suggested that the member of staff addressed in it should retire to his pear tree and take the following with him – this went on to list various topics including 3 DCSF ministers, 4 home education reviews, and 11 Badman advisors.
  38. The Commissioner also notes that the public authority explained that another member of its staff had been targeted when it discussed whether the request could be seen as obsessive (see paragraph 28). He considers that the point made is also relevant to the issue of harassment/distress.
  39. The Commissioner notes that some of the evidence provided by the public authority relates to events that took place after the request to



which this complaint relates, and is therefore not relevant to the issue of whether the public authority was justified in concluding that this particular request was vexatious. On the basis of the evidence that is relevant, however, it is the Commissioner's view that, given the effect that the complainant's requests have had on the authority and the targeting of named members of staff, this request can be considered to have harassed the public authority.

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

40. The public authority pointed to the Information Tribunal (IT) decision in *Mr J Welsh v The Information Commissioner (EA/2007/0088)* in which it considered whether a request constituted a significant burden. The IT said: '*... not just a question of financial resource but also includes issues of diversion and distraction from other work...*'.
41. The public authority explained in its refusal notice to the complainant that it had estimated that the cost of dealing with her previous requests would be no less than £3,300. It had also explained that if it had to deal with the current five requests for information she had submitted, there would be an additional cost of at least £1,375.
42. The public authority expressed its view to the Commissioner that this overall cost of at least £4,675 to public funds was far from insignificant.
43. The public authority also argued that the costs were not justifiable as people were annotating each others requests (the complainant herself had made some 65 annotations to requests about elective home education through this site, suggesting that she was familiar with the public authority's response to such requests). It considered that repeatedly incurring such costs was a significant diversion of public funds.
44. With regard to dealing with previous requests the public authority explained that this had proved both time-consuming and disruptive. It had caused distress because of the pressure of work and stress by having to deal with these enquiries as well as other business priorities. In practice the increased volume of correspondence as a result of the elective home education freedom of information campaign had led to a significant drop in the public authority's compliance rate in 2009. The public authority pointed out that this was an objective measure of pressure placed on it.

45. The public authority also explained that the human consequence was stress on individuals. It argued that it could not be expected to be staffed at an appropriate level to deal with unpredictable freedom of information campaigns. Further, staff had to deal with these campaigns as best they could along with their own business targets. With regard to its Information Rights team, the public authority explained there were areas of other work that this team had not been able to make progress on because of the elective home education campaign, for example work on embedding Privacy Impact Assessments into its working culture.
46. With regard to expense, the Commissioner considers it appropriate for the public authority to consider the aggregated effect of dealing with the requests. The Commissioner notes that in its refusal notice of 13 November 2009 the public authority explained to the complainant that dealing with her requests had cost it at least £3,300. It also explained that if it had dealt with the five current requests for information the overall cost would have risen to at least £4,675.
47. In conclusion the Commissioner accepts that taking all of the above into consideration, the effect of complying with the request would have placed a significant burden on the public authority both in terms of expense and distraction.

***Is the request designed to cause disruption or annoyance?***

48. The public authority explained that it felt that it could not take a view about this. It acknowledged that whilst some of the comments made by the complainant could be seen in this way, they may also have been the result of frustration with its earlier decisions to withhold information and the delays experienced by requesters due to the volume of requests received.
49. The Commissioner accepts that it is not possible to conclude that the request was intended to cause disruption or annoyance.

***Does the request lack any serious purpose or value?***

50. The public authority explained that it did not consider that the complainant's request lacked any serious purpose or value in itself. It acknowledged that the complainant felt that the report had shortcomings and that some of her requests attempted to elucidate matters.
51. However, the public authority drew the Commissioner's attention to the fact that the complainant had previously asked for local authority responses to the questionnaire via the *WhatDoTheyKnow.com* website

and had been refused. The public authority argued that this was relevant to any consideration of the application of section 14 given that the complainant's requests which were the subject of the refusal notice were in broad terms about the same or a substantially similar issue.

52. In considering whether the request lacked any serious purpose or value, the Commissioner notes that the public authority accepts that it does have serious purpose and value. He further notes the comments in the IT decision of *Betts v Information Commissioner (EA/2007/0109)* which considered the application of section 14. In this case, the complainant requested inspection records, policies and assessments in 2005. The Council provided this information under the Act, but when in January 2007 the complainant made a further request for information on health and safety policies and procedures, the Council claimed section 14.
53. The Information Tribunal found that the public authority in question could have responded to his requests over the two year period more accurately and in a more timely fashion. However, it also stated the following:

*"...the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the Council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on however and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests..."* (para 38).

54. The Commissioner notes that the time period in the present case is one year. However he also notes that, in the complainant's complaint to him, she states that she made requests for information every 9 days. The Commissioner has been provided with copies of some of the requests by the public authority. He considers that the requests are all related to the report.
55. Taking everything into account, it is the Commissioner's view that the request had a serious purpose and value initially.
56. Nevertheless, it is the Commissioner's view that the request is vexatious. He notes that the public authority has apologised for delays in its responses to the complainant and has had to deal with numerous requests all relating to the report. The Commissioner also notes that

the complainant has contacted various members of the public authority, including the then Minister for Education Ed Balls, and has had responses.

57. Taking all of this into account the Commissioner considers that the public authority was justified in applying section 14 in this case. He also considers that it is unlikely that the complainant would ever be satisfied with regard to the probity of the report. The Commissioner is also satisfied that the request could reasonably be seen as obsessive, that compliance with it would harass the public authority and distress staff and also impose a significant burden on it in terms of expense and distraction.

### **Procedural Requirements**

58. Section 17(5) provides that where a public authority is relying on section 12 or section 14 it should inform an applicant of this within 20 working days of receipt of the request.
59. The Commissioner notes that the request for information was made on 27 August 2009 and the public authority did not issue a refusal notice until 13 November 2009. Therefore he finds that the public authority has breached section 17(5) of the Act.

## The Decision

---

60. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- application of section 14(1).

61. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- section 17(5).

## Other matters

---

2Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

### *Internal Review*

63. The Commissioner notes that the complainant complained about the length of time taken for the public authority to carry out its internal review. A public authority is not obliged under the Act to carry out an internal review but in order to comply with the section 45 Code of Practice it should do so if possible. If a public authority is not going to carry out an internal review it should inform the complainant of this and provide details of her/his right to appeal to the Commissioner directly.

64. The Act does not specify a time limit for an internal review to be carried out. However, the Commissioner considers that it should be completed within 20 working days after receipt of the request for the review. The Commissioner has issued guidance on the time that should be taken to conduct an internal review which can be found on his website. It states that a one-stage review should be completed in 20 working days. In exceptional cases it may be appropriate to take longer but even in those cases it should not exceed 40 working days.

65. The Commissioner would also expect a public authority to inform a complainant if the internal review was going to take longer than 20 working days and explain why. The Commissioner would remind the public authority of its obligations in this regard.

## Right of Appeal

---

66. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 16<sup>th</sup> day of December 2010**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Section 14

**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.

### Section 17

**Section 17(1)** provides that -  
A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

**Section 17(2)** states –

Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and



- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

**Section 17(3)** provides that -

A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**Section 17(4)** provides that -

A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that –

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

**Section 17(6)** provides that –

Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,

- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

**Section 17(7)** provides that –

A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.