

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 12 March 2012

Public Authority: Upshire Primary Foundation School
Address: Upshire Road
Waltham Abbey
Essex EN9 3PX

Decision (including any steps ordered)

1. Between 31 January and 10 August 2011 the complainant submitted 16 requests for information to the school. The school dealt with some of the requests. It later stated that subsequent requests were vexatious but did not specify which section of the legislation it was applying. The Information Commissioner considers that the FOIA applies to most of the requests, apart from 2 points in a request of 30 March 2011, to which the EIR applies.
2. The school subsequently applied section 14 to the FOIA requests and regulation 12(4)(b) of the EIR to points 3 and 5 of one of the requests, appropriately. However, the school has breached section 17(5) of the FOIA and regulations 5, 11 and 14 of the EIR.

Background

3. Work was carried out in the pre-school playground of the school. This included putting breeze blocks down, landscaping and putting up trellises. There was also a 'snagging list' of jobs (which is a list of jobs that needed doing after the main building work has been finished) to be done.
4. The complainant had worked at the school in the past as its site manager during the time the work was carried out. He left the school and subsequently has made several requests for information about the work in question and related issues.

Request and response

5. The complainant submitted 16 requests for information to the school between 31 January and 10 August 2011. The requests are listed in annex 1. These requests included repeat requests and the complainant sending the same request to more than one person over five days. During this time the complainant also contacted the school asking for internal reviews and regarding various issues about his requests (for example, to explain how the FOIA worked and what qualified as a request).
6. On 30 March 2011 the complainant sent two emails to the school. One was a request for information and the other stated that he was going to complain to the Information Commissioner. The school issued a refusal notice on 19 May 2011. It stated that it considered the amount of time and effort taken to deal with the complainant's correspondence and requests for further information was costing the school in both time and effort. The school explained that it had kept a record of this. It also explained that it had taken legal advice throughout the process of dealing with his requests.
7. The school explained that it considered this and any further requests to be vexatious in nature and that dealing with them would place an unreasonable strain on a small school's resources; therefore, it would not be answering this or any further requests.
8. The school also offered, as a matter of courtesy, a face-to-face meeting with a named member of staff and one of the governors. The school also explained that the complainant could bring someone if he wanted.
9. The school also asked the complainant to stop email and text communications with any member of staff. It explained that in the past it had asked him to write to the Governing Body to avoid any misinterpretation, delay (as letters would be passed to the relevant governor and take little resource and no intervention by school staff) or in this case any further legal ramifications. The school also explained that if the complainant wanted to take the matter any further he should contact the local authority.
10. Subsequently the complainant sent two further emails asking for an internal review and also making various points about his request. He also explained that he was going to contact the Information Commissioner.

11. On 20 May 2011 the complainant sent another request for the same information he had requested on 30 March 2011. On 24 May 2011 the complainant sent in another request and also left a message for someone to ring him about his latest request.
12. On 25 May 2011 the complainant sent another request and on 24 June 2011 he emailed the school and told it to stop threatening him. He also included another request. On 1 July 2011 the complainant made another submission which included another six requests. On 5 July 2011 the complainant forwarded that last request to the school again. On 7 July 2011 the complainant contacted the school to say he had not received a refusal notice.
13. From 22 July to 26 July 2011 the complainant submitted another request and sent it to four people via email. He also sent the same request via Royal Mail. On 10 August 2011 the complainant submitted another request. The Information Commissioner also notes that throughout this time period the complainant contacted the school about various issues related to his requests and how they had been handled. He also sent emails explaining how the FOIA worked.

Scope of the case

14. On 29 June 2011 the complainant complained to the Information Commissioner about the way in which his request for information had been handled. He also stated that he had made numerous requests for information to the school with varying degrees of success.
15. The Information Commissioner notes that each complaint is about the same issue and the complainant has sent the same paperwork. The school applied the refusal in its letter of 19 May 2011 to each of the subsequent requests. Therefore the Information Commissioner has considered all of the complaints in this decision notice.
16. The complainant also contacted the Information Commissioner on 18 August 2011 to explain that his request for information of 28 June 2011 and subsequent requests he had not yet sent to the Information Commissioner had not been responded to. He later identified the subsequent requests in question as ones dated: 24 May 2011, 1 July 2011, 22 July 2011 and 10 August 2011 (these complaints are listed in annex 1).
17. The focus of the Information Commissioner's investigation was the school's application of section 14 of the FOIA and regulation 12(4)(b) of the EIR to the complainant's request. He has also considered the lack of

a refusal notice and the length of time taken for the school to issue a refusal notice.

Reasons for decision

Section 14

18. Section 14 applies where a request is "vexatious". The FOIA does not contain a definition of the phrase "vexatious" therefore it is the Information Commissioner's view that it is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants).
19. Although section 14 of the FOIA provides that a public authority can refuse to comply with a request it considers to be vexatious or repeated, regulation 12(4)(b) is subject to the public interest test. The Information Commissioner notes the presumption of disclosure at regulation 12(2).
20. This complaint is unusual in that the public authority has refused the requests in the wider context of a number of freedom of information requests received during a period of time. The school believes that the requests are to some degree associated with each other in that they all come from the complainant's belief that the school has done something wrong.
21. The Information Commissioner accepts that the requests for information are all linked in that when the school has disclosed information to the complainant in the past, he keeps asking for more. The Information Commissioner accepts that the school has coped with various requests from the complainant and that it has limited resources with which to deal with these requests.
22. The Information Commissioner issued revised Awareness Guidance called '*Vexatious or repeated requests*' to assist in the consideration of when a request can be treated as vexatious. The guidance sets out the following key questions to consider.
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
23. It will not be necessary for all of the above criteria to apply but in general the more that apply the stronger the case for a vexatious

request will be. The Information Commissioner is able to take into account the history and context of a request.

24. The Information Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:

"A request may not be vexatious in isolation but when considered in context (for example if it is the latest in along series of overlapping requests or other correspondence) it may form a wider pattern of behaviour that makes it vexatious".

25. In this case the Information Commissioner considers that the school has demonstrated that the requests could be seen as fairly obsessive, and that compliance with the requests would impose a significant burden on the school, and he therefore provides his analysis of those factors below.

Could the request fairly be seen as obsessive?

26. When a request for information is refused as vexatious or manifestly unreasonable, it is often the case that there is a difficult relationship between the parties which has arisen as a result of an original dispute. In this case the Information Commissioner notes that the complainant used to work for the school as its site manager and was involved in some of the work carried out.
27. The school argued that the complainant's requests could be seen as obsessive due to the volume and frequency of contact with it. The school provided the Information Commissioner with a record of the communication the complainant had with it between January and August 2011.
28. The Information Commissioner notes that the complainant made a request on 30 March 2011 in relation to which the school issued a refusal notice on 19 May 2011. From 30 March 2011 until 10 August 2011 the complainant submitted ten further requests. These included repeat requests and sending one request to four different people via email over six days and sending the same request via Royal Mail. The complainant also sent additional emails saying that for example he was unhappy with the tone of an email from the school.
29. The Information Commissioner notes that the complainant also sent emails to the head teacher informing her how the FOIA worked and complained that in response to one of his emails, he had received an automated response. However, the school explained that as the email was sent after school hours an automated response would be sent to any recipient.

30. Having considered the information provided by the school, the Information Commissioner is satisfied that the request is obsessive in nature.

Would complying with the request impose a significant burden?

31. The school explained that it was small, with a limited number of staff, therefore the communications from the complainant had placed a significant burden on both the staff and the school governors. It also explained that a member of staff had had to be paid 29 hours overtime to enable them to carry out their other duties in addition to dealing with the freedom of information requests; this money would otherwise have been spent on the pupils.
32. Further, one of the school governors had also worked on the school's response to the complainant's requests and would therefore also have to be paid overtime. The school also confirmed that dealing with the complainant's requests had taken this governor away from her regular job.
33. The Information Commissioner notes that the complainant told him that after receiving information from the school he goes on to ask questions about that information.
34. Having considered the information provided by the school, the Information Commissioner is satisfied that answering the request would place a further significant burden on the school.

Were the requests vexatious overall?

35. The Information Commissioner considers that the school has demonstrated that the requests were vexatious, since they were obsessive and imposed a significant burden on the public authority.

Regulation 12(4)(b)

36. The Information Commissioner considers that, in the request of 30 March 2011, points 3 and 5 related to environmental information. They should therefore have been considered under the EIR.
37. Regulation 2(1)(a) provides that any information on *"the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organism, and the interaction among these elements"*.

38. The complainant has requested information relating to the work carried out in the pre-school which includes the laying of grass and breeze blocks and the erection of trellises. The Information Commissioner considers that the requested information relates to the landscape and is therefore environmental information as defined in regulation 2(1)(a).
39. Regulation 12(4)(b) of the EIR applies where a request is "manifestly unreasonable". The EIR contains no definition of "manifestly unreasonable" but the Information Commissioner considers that the word "manifestly" means that a request should be obviously or clearly unreasonable.
40. The Information Commissioner recognises the similarities between section 14 of the FOIA and regulation 12(4)(b) of the EIR. In particular, he considers that a request that could be considered vexatious or repeated under section 14 of the Act may well be manifestly unreasonable for the purposes of the EIR.
41. Having considered the information in this case, the Information Commissioner is satisfied that the request for points 3 and 5 was manifestly unreasonable for the purposes of regulation 12(4)(b) of the EIR. His reasons for reaching that conclusion are the same as those identified above in respect of the application of section 14 to the other information.

Public interest test with regard to regulation 12(4)(b)

42. Regulation 12(4)(b) is a qualified exception under the EIR and therefore subject to the public interest test. Regulation 12(1)(b) provides that information can only be withheld if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

43. The Commissioner accepts that there is an inherent public interest in disclosure of the information to ensure that the school is transparent about the way in which it tendered for work and that best value was achieved. Increased transparency and accountability could lead to the school being more aware that its processes could be open to public scrutiny.

Public interest arguments in favour of withholding the information

44. The Information Commissioner notes that there are annual checks carried out to ensure the school is maintaining its finances appropriately.

He also notes that in response to the complainant's complaints to the Council about the school, an extra audit was carried out. Therefore, he is satisfied that the school is monitored appropriately and that if there had been any wrongdoing with regard to the tendering process, this would likely have been discovered and dealt with by the appropriate authorities. He also that considers that it is in the public interest to allow the school to continue with its duties without the distraction, in terms of time and expense, that compliance with these requests would present.

Balance of public interest test

45. The Commissioner's decision in this case is that while there is an undoubted public interest in the disclosure of information relevant to the requests, the public interest is best served by allowing the school to continue with its core duties of education, without the significant distraction, in terms of time and expense, compliance with these requests would present. In reaching this decision, the Commissioner is mindful of the significant amount of time that would be required to respond to the requests and increasing pressure on the limited resources available to the school
46. Having weighed up these factors, the Information Commissioner's decision is that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

Procedural Issues

47. The Information Commissioner notes that in response to the request on 30 March 2011 the school did not issue its refusal notice of 19 May 2011 within the statutory time period of 20 working days. He also notes that initially the school did not deal with part of the request of 30 March 2011 (points 3 and 5) as a request for information under the EIR.
48. In addition, the Information Commissioner notes that the school did not inform the complainant about his right to appeal to the Information Commissioner.

Other matters

49. The Information Commissioner notes that the school informed the complainant that the pre-school was not subject to the Freedom of Information Act 2000. The governing body of a maintained nursery school is in fact covered by FOIA (Schedule 1 Part IV paragraph 52). A maintained nursery school is as defined by section 22(9) of the Schools Standards and Framework Act 1998, which merely says it is maintained

by a local authority and not a special school. The Information Commissioner understands that the pre-school is funded by the Council which is a local authority and therefore in his view the pre-school falls under the FOIA.

50. The Information Commissioner notes that the school relied on the same refusal notice to deal with all of the complainant's requests, and that it explained that the school would not be dealing with any further requests from the complainant. The Information Commissioner expects a public authority to deal with requests on a case-by-case basis. However, in this particular case he acknowledges that the complainant continued to make requests to the school and was not satisfied with anything he was given. He further notes that the school has limited resources.
51. The complainant also requested internal reviews. If a public authority does not have a complaints procedure for internal reviews (as the school did not), it should inform the complainant of this and explain that the complainant can appeal directly to the Information Commissioner. It should also provide the Information Commissioner's contact details.

Right of appeal

52. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

53. 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.
54. 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

Jon Manners
Group Manager
Information Commissioner's Office
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Water Lane
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SK9 5AF

Appendix 1

1. FS50408845: Request of 30 March 2011 – (points numbered for ease and convenience)

'For the attention of the Chair of Governors

Please send me the following:

- '1. The Headteacher's Log of Complaints relating to me.*
- 2. The name of the Chair of the Finance & Premises Committee from March 2010 to March 2011.*
- 3. The registered company number of the contractor that invoiced the school for £10,000 (Invoice number UP/S-80211).*
- 4. The register of business interests for school governors.*
- 5. The documents described in the minutes of the Finance meeting 03.09.10. These should include:*

The letter inviting the company to complete the snagging list.

The snagging list.

The memo attached to the invoice.

Any notes of the meeting where [a named member of staff from the school] and the company representative discussed health and safety implications.

- 6. Also please send me the minutes of any meeting where a decision was made not to respond to:*

a: My emails.

b: Other peoples emails.

c: My requests for information.

d: My formal complaints.

e: My request for an internal review.'

2. FS50435672: Request of 24 May 2011

'For the attention of the person responsible for dealing with Freedom of Information requests. Please send me the minutes if the emergency meeting convened to discuss my 21 questions where [a named member of staff] was one of the governors present.

The information should also include the date if the meeting, the members of the panel present at the meeting and the agenda.'

3. FS50408858: Request of 25 May 2011

'For the attention of the person responsible for dealing with Freedom of Information requests. Please send to me by emails [complaint's personal email address] the members of the Finance & Premises Committee from March 2010 to June 2011. If you have not intention of supplying the information I have requested you still need to send me a refusal notice.'

4. FS50408927: Request of 24 June 2011

'For the attention of the Headteacher, Deputy Head and governing body.

Please do not send me any more threatening letters. I am on [complainant's own sensitive personal data] caused by the letter for [a named member of staff] dated 19 May 2011.

I do not know or trust this person and I am concern (sic) for my well being. I am most distressed to learn that he has access to my personnel file. Therefore I will not correspond with him and I will only have a meeting with All (sic) of the governing body present and I will not agree to any strict parameters being laid down for any such meeting because I do not believe I have transgressed my confidentiality agreement. The governing body would know this any way.

I can't imagine why you would go to such lengths over this if you have nothing to hide but if you are taking me to court, rather than veiled threats, have the decency to tell me what I am being accused of. As far as I am concerned I have done absolutely nothing wrong. [A named member of staff] makes a point of informing me that the school has taken legal advice. So please tell me, what information do you think I obtained whilst I was at the school? And have I actually breached the confidentiality agreement? Maybe you are just irritated that I am questioning if the school acted correctly? Wouldn't you want to prove you acted correctly?

I must point out that [a named member of staff] stated that it was his job to review my initial complaint. If the school recognises this as a legitimate complaint and appoints someone to deal with it as such, it is rather contradictory for the school to then say that there is no complaints procedure in my case.

I am not satisfied that my questions, complaints and requests for information have been adequately dealt with by the school. What was your legal advice? Isn't the better way forward simply to investigate what I'm asking? Why are you fighting this so hard if you have nothing to hide?

Why are you fighting this so hard if you have nothing to hide.

You know that the duties under the Freedom of Information Act apply to the governing body about any information held by it. So why are you reluctant to send me the information held by it. What harm is there in the public knowing the names and dates of estimates. Surely this would show that correct procedures were followed and prove that three competitive quotes were obtained.

Why not send me the Register of Business Interests for governors?

Wouldn't it prove that there were no governors related to bidding contractors present at any meetings where budgets were discussed and decisions made about the landscaping in the pre-school?

Why not send me the minutes of the meetings [a named member of staff] said he was involved with? In his letter he states he was involved in the first committee meeting which discussed my original 21 questions. There was also an emergency meeting convened to discuss my 21 questions where he was one of a panel of governors present. These meetings must have taken place between 1st February and the 4th February but there are no minutes for them. Wouldn't these minutes prove that these meetings actually happened and questions were discussed and that the whole of the governing body were aware of them? I am told that the school has documented that cost of time and effort in dealing with my request. This can only show how much effort has gone into dealing with my requests. I have tried to make it as easy as possible for you to send the information but still you refuse.

You have used different reasons why I can't use emails. Misinterpretation, delay and needing a signature and none of them are justified. I'm sure you will send this email to your legal adviser by email. So if it's OK for you and him then surely it's OK for me.

On the subject of the pre-school being a private concern. If this is the case then why was I told to carry out work there? My contract was with Upshire Primary Foundation School not Start Upshire Preschool. I don't recall getting paid extra to work for a private enterprise. How much money was the school paid for my services?

Your own policy is to be fair, open and honest. I hope that's what the school believes because that is all I'm asking for.'

5. FS50435770: Request of 1 July 2011

References: FS50408845, FS50435672, FS50408858, FS50408927, FS50435770, FS50435687, FS50435674.

'For the attention of the Personnel Manager. This is a Freedom of Information request, so you have a duty to respond.

1. Please send me the document mentioned in [a named member of staff's] letter (dated 19 May 2011) which outlines the demands being placed on staff and governor's time in complying with my requests for information, formal complaints and an internal review.

2. Please send me any correspondence between the school and [a named principle solicitor] in which the name [complainant] appears.

3. Please send me any documentation of my alleged transgression of my signed confidentiality agreement.

4. Please send me a printout of how much funding was received from the Local Authority for Upshire Primary Foundation School and Start Upshire Pre-school in the period from January 2010 to January 2011.

5. Please send me a printout of the amount of money Upshire Pre-school gave to Upshire Primary Foundation in the period from January 2010 to January 2011.

6. Please send me the minutes of any meeting since the 16th February 2011 where my name is mentioned.

7. Please send me a copy of the Internal Control Evaluation Report for the visit of [a named person] on 15th February 2011 and any documents mentioned in that report.'

6. FS50435687: Request of 22 July

'For the attention of the Headteacher.

Does the Governing body sign a code of conduct? Please send me a copy.'

7. FS50435770: Request of 10 August 2011

'For the attention of the Governing body.

Please send me the minutes of the full governing body meeting dated 11th July 2011.

Also please send me the minutes of any committee meetings held on the 11th July 2011.'