

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 April 2015

**Public Authority:** Lancashire County Council  
**Address:** County Hall  
Preston  
Lancashire  
PR1 8XJ

#### **Decision (including any steps ordered)**

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1. The complainant has made two requests to Lancashire County Council ("the council") for information relating to a children's nursery. The council refused the two requests under the exclusion provided by section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly refused the requests under section 14(1).
3. The Commissioner does not require any steps to be taken.

#### **Request and response**

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4. On 4 December 2014, the complainant wrote to the council made two requests (referred to as "Request 1", and "Request 2"). The texts of both requests are provided in Annex 1.
5. In respect of Request 1 the council responded on 6 January 2015, and refused it under the exemptions provided by section 31(1)(a) and section 38(1)(b).
6. The council provided an internal review on 16 January 2015 in which it maintained this position.

#### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 January 2015 to contest the council's response. Following this, the council considered

both Request 1 in conjunction with Request 2, and choose to revise its position and apply the exclusion provided by section 14(1).

8. The Commissioner therefore considers the scope of this case is the determination of whether the council has correctly applied section 14(1) to refuse the two requests submitted on 4 December 2014.

## **Reasons for decision**

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### **Section 14(1) – Vexatious requests**

9. Section 14(1) states that:

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

10. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#5>
11. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

#### The interaction between the parties

12. It is evident from information provided by the two parties that the complainant began submitting information requests about the nursery in 2012, when he made three requests for information concerning the number of children in attendance and the associated running costs.
13. The complainant made four further requests throughout 2013. These sought further information about running costs; the costs associated with gates and a secure entrance; and the accounts for a children's group held at the nursery.
14. A further three requests were submitted in 2014, the first being for information about other groups held at the nursery, and the remaining

two, which were submitted on 4 December 2014, being for information about alarms logs and a planning application . It is at this time that the council has sought to apply section 14(1).

The complainant's position

15. The complainant has advised the Commissioner that he is concerned with a range of issues relating to the nursery. These issues include the expenditure of public monies on the nursery; whether the nursery may have been left unsecured for the times and dates described within request 1; and whether or not the nursery had considered ground contamination (from an oil tank had been formally located on the site) as part of a planning application it had made to extend the nursery.

The council's position

16. The council has advised the Commissioner that it considers the complainant is misusing the FOIA in order to widen and pursue a personal grievance against the nursery.
17. The council has outlined that the complainant has been in contact with the nursery and its head teacher since at least 2011, and has raised a number of complaints by this means. These complaints have spanned from the timing of particular events (such as the opening and closure of a gate, the collection of waste, and the delivery of milk) to environmental concerns such as noise and light pollution. The complainant has also contested the nursery's recent expansion to include younger children in the form of a new children's group. The council has elaborated that the nursery has introduced a 'single point of contact' for any further contact by the complainant in order to prevent him from directly contacting the head teacher.
18. The council has further stated that the nursery has considered it necessary to call the police following the complainant confronting the site supervisor on their opening of the gate, and that this subsequently lead to the complainant being advised to not approach the site supervisor in the future.
19. The council has advised that the complainant holds a lease for the access way to the nursery (to which access rights have been reserved for the nursery), and it is perceived that the complainant's grievance against the nursery stems from a dispute about the use of the gate.
20. The council considers that it has taken proportionate steps in order to address the complainants concerns, both in respect of his requests for information, and complaints to the council and nursery. This has included a meeting with the nursery's Chair of Governors and local councillors, and a response from the Chief Executive that advises that

the council considers its opening and closure of the gate at the times done to be reasonable, and that the council does not intend to effect any changes.

The Commissioner's analysis

21. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be refused on vexatious grounds, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
22. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

*The purpose and value of the requests*

23. Having consulted the complainant's requests, it is clear that they are based upon concerns about the security of the nursery, and more widely, whether the nursery has followed a planning application process properly. The complainant, in his submission, specifies that the disclosure of the alarm logs (as sought by Request 1) would provide public assurance that the building remains secure during these times, and that any report created by the nursery as part of planning consultation (as sought by Request 2) would inform the public about whether any contamination issues had been considered prior to seeking planning permission.
24. However, having received the submissions of both parties, the Commissioner is aware that the complainant's interaction with the council and nursery span from 2011 onwards, and cover a range of other issues that have formed the subject of information requests and general complaints.

25. While the Commissioner acknowledges that the issues contained within the complainant's requests of 4 December 2014 may normally have some public interest inherent within them; when considered against the context of the complainant's previous contact, it becomes apparent that the latest requests form part of a sustained course of enquiry about the nursery that addresses varied and seemingly unrelated topics.
26. The extent of the complainant's previous information requests and complaints, both in time and subject matter, suggests to the Commissioner that this activity may be grounded in a sense of grievance against the nursery, which the Commissioner understands is located near the complainant's residence, and which also holds rights to use an access way that the complainant holds the lease to. While the Commissioner appreciates that that the complainant, due to residing near the nursery and sharing an access way with it, may have genuine reasons for raising various complaints against the nursery, he considers that in this circumstance, the complainant is likely to have submitted his information requests in an effort to seek areas of dispute against the nursery, and thereby extend interaction with the council. Having considered this context and likely motivation, the Commissioner has concluded that the two information requests have limited serious purpose and public value.

*The burden upon the council*

27. The council has provided the Commissioner with a list of previous requests under the FOIA, which the Commissioner has reviewed on [www.whatdotheyknow.com](http://www.whatdotheyknow.com). From this information, the Commissioner has concluded that prior to applying section 14(1), the council had responded to a total of eight requests for information between 2012 and 2014, all of which are focused on the nursery. It is also apparent that the complainant has raised a number of corporate complaints about the nursery that focus on a wide variety of issues, and which have resulted in referrals to the council's Environmental Health office, and more lately, a meeting between the complainant and council members, as well as a response from the council's Chief Executive.
28. Having considered this context, the Commissioner has identified that significant public resources have already been expended in responding to the complainant's information requests, which have sought information about a range of varied topics relating to the nursery. Having considered this background, the Commissioner considers it reasonable to conclude that responding to the complainant's requests of 4 December 2014 is likely to result in further information requests or complaints by the complainant and through this add to the burden upon the council's resources.

*Conclusion*

29. While the Commissioner appreciates that the siting of the nursery near to the complainant's residence is likely to have resulted in some genuine concerns on the part of the complainant, he has identified that the public value in the two requests is inherently limited. It has become evident that these requests share the same substantive topic (the nursery) as those made previously, and represent a sustained course of enquiry about the nursery over several years. The Commissioner considers it reasonable to conclude that these recent requests are likely to have been made to seek areas of further dispute, and through this force further engagement with the council about the nursery.
30. Additional to this, the Commissioner has identified that the sustained correspondence and information requests that the complainant has submitted since 2011 are likely to have already utilised a significant amount of public resources. Should the council respond to the complainant's requests of 4 December 2014, it would be required to further divert resources away from its public duties, and furthermore, would be likely to lead to further correspondence from the complainant. Having already considered that the requests hold limited serious purpose and public value, the Commissioner does not consider that this diversion of public resources would be justified.
31. Having considered the limited public value of the requests, in conjunction with the burden on the council's resources, the Commissioner has therefore concluded that the council's refusal of the requests on vexatious grounds was correct.

## Right of appeal

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32. 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)

33. 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.
34. 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 .....**

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

## **Annex 1**

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### 35. Request 1:

*"During October 2014 I became aware that the caretaker for Rockwood Nursery in Burnley was opening up the building, turning on the majority of the lights, leaving the main gate open then leaving the site around 6:20 a.m. when plainly its's still dark and no-one about - staff do not arrive until approximately 07:10 meaning the site is unoccupied for almost an hour. As well as a blatant waste of energy, I consider this to be a careless and negligent compromise of the security of both this facility and the neighbourhood.*

*I would like to establish whether the alarm system had been left unset during these periods and to this end I would like to request the alarm logs are made available - to explain, generally these alarm systems report setting/unsetting and of course alarm events to a central monitoring station, so these records should allow me to see if the building was left completely unprotected.*

*The dates I am interested in are between the 13th and the 24th of October 2014 inclusive."*

### 36. Request 2:

*"In 2014 a planning application was made by Lancashire County Council, reference LCC/2014/0034 for works at Rockwood Nursery in Burnley. One consideration for this application was the potential for pollution at the proposed site because of the existing oil tank that had been located there for decades.*

*During the planning consultation, one of the speakers, [redacted name], the head teacher at Rockwood Nursery and a director of the Teddy's Playgroup, during her presentation to the development committee mentions that the site had been inspected and declared safe - I would like a copy of that report please together with any associated results from sample testing or similar that may be available."*