

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 July 2015

Public Authority: Reading School

Address: Erleigh Road
Reading
RG1 5LW

Decision (including any steps ordered)

1. The complainant has requested from Reading School (the "School") copies of the test papers for the Year 7 day-boy entry and for information broadly relating to the School's admissions process.
2. The School provided the complainant with some information to part 1 of the request and it confirmed that it does not hold any further information relating to part 3. To the remaining parts of the request, the School refused to comply on the basis that the request is vexatious in accordance with section 14 of the FOIA.
3. The Commissioner's decision is that the School does not hold any further information falling within the scope of part 3 of the request. His decision is also that the School has correctly applied the vexatious provision at section 14(1) of the FOIA to the remaining parts of the request.
4. The Commissioner does not require the School to take any steps.

Request and response

5. On 5 January 2015 the complainant wrote to the School and requested information in the following terms:

"I would like to request copies of the test papers for the Y7 day-boy entry, the boarders tests and the late test taken in January for entry in 2010, 2011, 2012, 2013 and 2014. If any entire tests were reused then rather than duplicating them in full please provide a clear statement indicating which tests were repeated on which occasions?"

I also have the following new requests for information.

1) Governing Body

Please provide:

- *Copy of the governing body's policy covering the appointment of governors and maximum length of tenure.*
- *Details of the date any such policy was ratified*
- *For each current school governor, details of when they started and when their current term of office expires*
- *The dates [named individual] was appointed as school governor and when he retired. (Just the year not the exact date)*

2) Pupil Premium

I'd like to request the postal sector of the home address of those pupils who currently attend Reading School and are in receipt of pupil premium. (The postal sector is the full post code with the last two digits removed, e.g. Reading School's postal sector is RG1 5.) The advice from the Information Commissioner (<https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code> pdf) is that a postal sector will contain approx. 2,600 households so this information should be sufficiently anonymised to not be in breach of the DPA, however if you have any concerns over releasing this information please could you check with the Information Commissioner's office rather than refusing to provide this information it on the chance that providing it may contravene the DPA.

3) Legal costs

Please provide a summary of the cost of all legal advice obtained during the calendar years 2013 and 2014 in response to any members of the public trying to obtain information relating to the school's admissions process."

6. On 19 January 2015 the School responded. It provided the complainant with information to part 1 of his request, it stated it does not hold the information at part 3 (legal costs for 2013/14) and applied section 14 to the remaining points of the request.

Scope of the case

7. The complainant contacted the Commissioner on 26 January 2015 to complain about the way his request for information had been handled. He confirmed the parts of his request he required investigating: parts 2 and 3. He also confirmed that part 1 did not require the Commissioner to investigate and that he is not seeking to complain about the School's response to part 1 of his request.
8. The Commissioner will consider whether the School holds further information relating to part 3 of the complainant's request as the complainant was dissatisfied with the School's response to this. Also, whether the School was correct to apply section 14 of the FOIA to the remaining parts of the request.

Reasons for decision

Section 1 – information not held

9. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
10. The Commissioner acknowledges that the School had informed the complainant that it does not hold the information regarding *Legal costs* (part 3 of the request) and it explained that due to the arrangement which the School has with its lawyers, it is unable to calculate this. However, in scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request).

The School's position

12. The School argued that the requested information is not recorded in any form. In its response to part 3 requesting information for "*Legal costs*" the School said that to answer this question it must consider the nature of this information. It interpreted this request to be a question on "*how*

much has the school spent with its lawyers in dealing with admissions related requests?" The School stated that it does not know.

13. The School explained that it instructs a law firm to act on its behalf on a number of cases. It said that information is recorded on the total fees paid for the invoices the law firm has raised. However, a separate amount detailing the School's lawyers' time that is spent on individual FOIA requests is not recorded. It added that the costs pertaining to the queries about school admissions, is not recorded either and that there is no mechanism or formula to produce this information.
14. The School reiterated that the legal costs as set out in the request are not recorded in any form because they do not exist. Therefore, the School is not able to provide a summary of the legal costs. It assisted the Commissioner in deciding whether on the balance of probabilities the School holds any recorded information falling within the scope of the request and it answered the required questions it was asked to submit.
15. The School stated that it had reviewed its lawyers' fee notes for 2013 and 2014 to ascertain whether the requested information was recorded. It confirmed that no electronic search was made as the information does not exist. The School also confirmed that information has never been deleted or destroyed.
16. The School said that it does not have a formal records management policy but that it does follow the guidance from the 'Information Records Management Society Toolkit'. The School explained that it cannot disclose the information to part 3 of the request because the legal costs cannot be calculated as the information does not exist.
17. The School stated that it could only provide the total amounts paid to the law firm in the years 2013 and 2014. The Commissioner notes that this information is outside the scope of the request as it would be a total of *all* costs incurred. The School said that these complete figures are published and available on its website.

The Commissioner's position

18. The Commissioner accepts that the School does not hold the requested information to part 3 of the request. He has considered the School's explanations and its answers to the specific questions. Therefore, based on the School's position, the Commissioner is satisfied, on the balance of probabilities that the requested information falling within the scope of the request is not held.

Section 14 – vexatious requests

19. Section 14(1) of the FOIA states that a public authority may refuse a request if it is vexatious. The FOIA does not define the term, but it was discussed before the Upper Tribunal in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).
20. In this case the Upper Tribunal defined a vexatious request as one that is "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
21. In making his decision the Commissioner has obtained submissions from both the complainant and the School to understand the circumstances surrounding the request in order to reach a decision on whether the request is vexatious. The Commissioner will consider their arguments where appropriate.

Unreasonable persistence

22. The School argued that the request is not just repeated but that the complainant is being unreasonably persistent and harassing. It stated that it believes that the complainant has an apparent vendetta against the School following his son's failure to obtain a place in 2013.
23. The School also stated that it had taken into account that the complainant had started an online campaign in the form of a petition. In his petition, the School said that the complainant stated:

*"We believe that historically, Reading and Kendrick schools only admitted **local** children but in relatively recent years the catchment was massively extended, simply to boost their league table ratings. Such a policy has alienated the local community whilst illegally discriminating against those on low incomes who cannot afford to send their children long distances to school."*

The School considered the complainant's statement to be a serious allegation of alienation and discrimination.

Disproportionate effort

24. The School argued that considering the amount of information that the complainant had already obtained through requests relating to the admissions process of the School, that there is little added value or purpose in providing additional information. It said that in view of this

and the context and history of the request, the School considers that the level of disruption is disproportionate and unjustified.

25. The Commissioner has seen evidence of the multiple requests which the complainant had made relating to this subject. He has noted that the correspondence between the complainant and the School dates back to 2013 when the complainant raised the original issue. Also, the Commissioner has viewed the information which the School had previously provided to the complainant regarding concerns about school admissions.
26. The School stated that it had spent a considerable amount of time and resources in dealing with a large volume of requests at a significant cost to the School. It said that these requests are sometimes unclear and that the complainant has pursued, in its view, his vendetta against the School (specifically the admissions process). The School added that the information he is seeking is almost the same or similar in each scenario.
27. The School argued that the complainant also raises many purported concerns which he believes the ICO/Tribunal can rule upon. It stated that the School's lawyers had explained this to the complainant but it believes that he does not understand that the Tribunal has no jurisdiction in matters such as: "*whether the admission process is fair; or our catchment area is lawful.*"

Burden on the authority

28. The School argued that the complainant has placed an unreasonable burden on the School and its staff. It said that the tone of the complainant's correspondence indicates, in its view, that he is obsessive which it considers has an adverse effect on the School and the staff that deal with such requests.

The complainant's position

29. The complainant argued that there is "*undeniable a great amount of public interest*" in this subject. He said that other members of the public have raised some concerns about the effectiveness of the School's security. He believes that the release of this information would allow the public to understand to what extent questions or papers were re-used by the School.
30. The complainant stated that in refusing to provide the information, he believes that the School is refusing to allow an informed and open public debate on its admissions.

31. The complainant argued that his request is not intended to be "*annoying or disruptive.*" He is of the view that the release of this information is in the public interest. He added that he does not believe that it would have a disproportionate impact on the School.

The Commissioner's position

32. The Commissioner understands that the complainant believes that the School is preventing the disclosure of information needed to enable an open and informed public debate about how it generally handles admissions.
33. The Commissioner notes that the complainant is seeking an explanation for what he considers to be a number of irregularities in the Schools' handling of admissions for school entry in 2013. This is outside the scope of this request and is a separate matter. However, it shows that the complainant is insistent in obtaining answers to his concerns and that further correspondence continues between him and the School.
34. The Commissioner acknowledges that the School provided some information relating to part 1 ("*school governors*") of the request. Although the complainant considered the information disclosed was not what he requested, he stated that he had subsequently discovered the information on the School's website.
35. The Commissioner notes that he had previously upheld the School's use of section 14 of the FOIA in decision notice FS50529097 which was subsequently appealed to the First Tier Tribunal EA/2013/0227.

Conclusion

36. The Commissioner is satisfied that the wider context and history to this request shows a long standing issue which has been thoroughly investigated on more than one occasion. It would therefore appear that the complainant is trying to reopen issues that have already been addressed.
37. The Commissioner has taken into consideration the complainant's number of information requests which relate to the same or similar subject. He has noted some evidence of this which includes: the complainant's information request (not FOI request) of January 2013 regarding consultation over admissions policy, a FOI request made in May 2013 also relating to consultation over admissions policy, an appeal made against the School, further FOI requests made in August,

September, November and December 2013 and also his subject access request of November 2014.

38. The Commissioner has considered the complainant's statement made in his on-line campaign in which an allegation had been made against the School and accusations of discrimination. The Commissioner has noted the complainant's tone within his correspondence: "*I will keep going until I get the truth.*" Also, in a letter to the School the complainant claimed that the School's reason for refusing to provide information was that it is "*concerned that its release would expose malpractice on their part*" and that the School have subsequently undertaken "*a systematic campaign to cover up this mistake.*"
39. He recognises that this request is a continuation of an obsessive campaign and that provision of the requested information will not resolve the issue of the complainant's dissatisfaction with the School.
40. The Commissioner accepts that to comply with the request is likely to have a detrimental effect upon the School which will cause an unreasonable burden, irritation and distress to the staff involved. To comply is also likely to lead to further communication from the complainant.
41. Therefore, the Commissioner has decided that this request can be considered as vexatious and that the School is correct to apply section 14 of the FOIA.

Right of appeal

42. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF