

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2015

Public Authority: E-ACT

Address: 3rd Floor
10 Queen Street Place
London
EC4R 1BE

Decision (including any steps ordered)

1. The complainant requested information about complaints made against particular members of staff at The Oldham Academy North (TOAN). E-ACT determined that the request for information was vexatious in accordance with section 14(1) of the FOIA.
2. The Commissioner's decision is that E-ACT is entitled to rely on section 14(1) in refusing this request. He does not require the public authority to take any further steps.

Request and response

3. On 19 December 2014, the complainant submitted a request for information of the following description:

'Under the freedom of information act I would be grateful for the following information to processed as a matter of urgency.

1. *Can you confirm if [Named Individual], [Named Individual] or [Named Individual] have had any complaints against them made or reported to toan or e-act*
 2. *If so reveal the nature and outcome of the complaint*
 3. *Have [Named Individual], [Named Individual] or [Named Individual] ever been under any type of investigation*
 4. *If so reveal the nature of the investigation and the outcome'*
4. On 19 December 2014, E-ACT issued a refusal notice. It determined that the request was vexatious under section 14(1) of the FOIA.

5. On 26 January 2015, the complainant submitted an internal review request.
6. On 12 March 2015, E-ACT issued its internal review decision. It upheld the application of section 14(1) of the FOIA in refusing to comply with the request on the grounds that the request was vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 23 March 2015, to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of this investigation is to determine whether E-ACT is entitled to rely on section 14(1) of the FOIA in refusing the complainant's request.

Reasons for decision

9. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
10. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
11. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

¹ GIA/3037/2011

12. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

13. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests.² The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

Burden imposed by the request

15. In its internal review response E-ACT set out that the complainant has made 6 freedom of information requests within a 6 month period (June-December 2014). These requests amount to 25 individual queries.
16. E-ACT calculated that it has spent approximately 30 hours dealing with the complaints requests and this has impacted upon its core functions by spending £4,300 of its resources, which it considers to be a conservative estimate, that could have been spent supporting students.
17. E-ACT submits that since 2011 it has tracked all FOIA requests it receives in relation to the 23 Academies it supports. FOIA requests about TOAN make up 27% of the total while the academy with the next highest percentage represents 3% of the total.
18. E-ACT also advised the Commissioner that TOAN has also received a higher number of complaints and whistleblowing claims.

2

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

19. E-ACT argued that a pattern has emerged which suggests that the complaints and requests it has received about TOAN are part of a deliberate campaign of harassment by a small group of people which includes the complainant. E-ACT points to the timing of the requests and the appearance of disclosed information included in future complaints from different individuals as evidence of this. E-ACT also provided the Commissioner with correspondence consisting of complaints from a variety of individuals dating back to 2012, in which patterns emerge in content, language and timing, as further evidence that a group of individuals are acting in unison as part of a campaign to disrupt TOAN and harass individuals.
20. In the Commissioner's view, while the evidence supporting E-ACT's argument that there is a link between individuals submitting complaint's and information requests to TOAN is not conclusive there is sufficient evidence to suggest that individuals are working in unison in a deliberate attempt to cause disruption and harassment to TOAN and the individuals in question.
21. In any case the Commissioner notes that a campaign can be conducted by one person and considers that the complainant is persistent in his pursuit of information relating to TOAN and indeed has had a considerable amount of information disclosed as a result of his requests. The Commissioner has considered E-ACT's submissions and accepts that the complainant has initiated a campaign against TOAN. In the Commissioner's view the volume and detail of the requests are excessive, if not obsessive, and there is nothing to suggest that requests are likely to stop, irrespective of the amount of information disclosed.
22. The complainant argues that none of his requests have been repeated and the reason he has submitted a number of requests is because it would exceed the costs limit under FOIA if he were to include all his questions in one request.
23. The Commissioner considers that the complainant's argument demonstrates that he is aware of the burden that dealing with the requests would cause. The fact that requests have been submitted over a period of six months rather than all at once means it is unlikely to exceed the cost limit but does not reduce the overall burden on the public authority.
24. The Commissioner accepts that this request, set in the context of others that have been submitted by the complainant, has placed a significant burden on the public authority which has had to deal with a considerable number of detailed requests over a relatively short period of time. He considers it reasonable to conclude that the burden imposed by these requests has had the effect of diverting the public authority from its core

functions, and indicates the request forms a part of a disproportionate and inappropriate use of the FOIA by the complainant.

Harassment to the public authority

25. The FOIA is generally considered to be applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made or any evidence the applicant has imparted about the purpose behind their request.
26. E-ACT advised the Commissioner that the complainant is a former member of staff from TOAN who was subject to compulsory redundancy following a staffing restructure. E-ACT argues that following the restructure some of the staff members made redundant, including the complainant, were aggrieved and blamed the leadership team for what they perceived to be flaws in the restructuring process.
27. E-ACT argues that having exhausted all methods of redress available under HR and employment law they began using other options available to them such as submitting FOIA requests and complaints to disrupt the on-going changes at TOAN and cause harassment to individuals responsible for the restructuring decisions which led to redundancies.
28. In its refusal notice and subsequent internal review decision E-ACT set out that it believed the complainant was targeting his request to specific individuals due to a personal enmity he holds against them.
29. The complainant maintains that although he is an ex-employee he has no enmity towards members of staff or TOAN and suggests that there is no evidence for this.
30. E-ACT argued that the complainant had been witnessed demonstrating threatening behaviour towards one of the staff members named in the request. It also argued that the complainant has advised prominent members of the community that he intends to bring TOAN and members of staff into disrepute by making allegations, complaints and constantly submitting FOIA requests. It provided evidence to support this.
31. The Commissioner notes that this particular request is specific to three members of staff and this is not the first time the complainant has made a request about one of those individuals in particular. Previous requests have asked for information about details of one of the named individual's salary, pension details and severance pay as well as the number and details of parental complaints made against the individual. Further requests have been made for information about other members

of the leadership and management team as well as requests for information regarding the restructure process.

32. E-ACT has advised that one of the individuals who is the subject of the complainant's request no longer works for E-ACT and their decision to move away from TOAN was in part due to the stress caused by the harassment of the group of campaigners including the complainant.
33. E-ACT also advised the Commissioner that another of the individuals named in the complainant's request, has suffered distress as a result of the disruption and harassment caused by complaints made against TOAN.
34. E-ACT also advised the Commissioner that the complainant has telephoned TOAN and E-ACT head office on several occasions and his manner has left staff feeling threatened.
35. The Commissioner is satisfied that the evidence provided by E-ACT demonstrates that the complainant does hold a personal grudge against current and former members of the leadership team as a result of their role in the restructure, and his subsequent redundancy. The Commissioner considers that the complainant is using the FOIA and raising complaints to disrupt TOAN and E-ACT and cause harassment to the staff named in the request.

Value or serious purpose

36. It is often difficult to determine the motive behind a request for information and this case is no different. The complainant sets out his requests in a courteous and factual manner.
37. The complainant has advised the Commissioner that his request has serious purpose as there have been several high profile incidents of racist comments and complaints against the individuals named in the request. Therefore the request was submitted to find out whether such complaints are dealt with adequately.
38. The Commissioner notes that two of the individuals named in the complainant's request hold/held senior positions within TOAN. However, he also noted that there is no evidence to suggest any complaints have been upheld by OFSTED or the Department for Education.
39. E-ACT has argued that previous FOIA responses have been shared with the local press and circulated to parents. It argues that if it were to disclose the information requested in this case, it would cause unnecessary and disproportionate distress to parents and carers at TOAN as well as to the individuals named in the request.

40. The Commissioner appreciates that not all requests and complaints made to E-ACT about TOAN will have been made for vexatious purposes, and there is a public interest in ensuring that complaints made against senior members of staff are dealt with adequately. However the Commissioner is satisfied that on this occasion the balance of evidence demonstrates that information requests made about TOAN have been made by individuals who appear to be acting in unison to disrupt and harass the public authority and considers that the request which is the subject of this case has also been submitted to cause harassment and disruption. As such he does not consider that the request in question has a serious purpose or value.

Conclusion

41. The Commissioner accepts that the application of section 14(1) in this case is finely balanced. On the face of it the complainant's request and the motive for submitting the request appears reasonable. Furthermore the Commissioner has considered that the disproportionate amount of information requests and complaints E-ACT has received in relation to TOAN could be because of genuine concerns about its performance and that of senior employees. However, the Commissioner is satisfied that the evidence provided by E-ACT does show that the complainant is using the FOIA to deliberately cause harassment.
42. The fact that complainant had submitted 6 FOIA requests over a period of 6 months demonstrates that the requests are excessive, if not obsessive, and there is nothing to suggest that requests are likely to stop, irrespective of the amount of information disclosed. Furthermore, the fact that this particular request is targeted against specific individual's whose decision to implement a staffing restructure led to the complainant being made redundant, along with evidence submitted by E-ACT, shows that the complainant is pursuing a campaign towards those individuals.
43. Taking account of all the factors set out in this notice the Commissioner finds that section 14(1) is engaged.

Right of appeal

44. 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

45. 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.
46. 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