

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2015

Public Authority: E-ACT
Address: 3rd Floor
10 Whitfield Street
London
W1T 2RE

Decision (including any steps ordered)

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

Request and response

3. On 2 March 2015 the complainant requested information of the following description:

"Currently how many days does [named employee] work as [named position]."

Currently Is [named individual] Role as [named position] part or full time

What safeguarding training/qualifications does [named individual] hold

Does [named individual] have any training to carry out disciplinary investigations

Has [named individual] carried out any staff disciplinary investigations? If so how many?"

Has [named individual] been part of any staff disciplinary investigations? if so how many

Is [named individual] part of the future leaders course if so name the person responsible for quality assurance of this course at Oldham Academy North"

4. On 5 March 2015 E-ACT responded.
5. It refused to provide the requested information citing the following exemption as its basis for doing so: Section 14 – vexatious or repeated requests.
6. The complainant requested an internal review on 6 March 2015. E-ACT sent the outcome of its internal review on 17 April 2015. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 21 April 2015 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the investigation is to determine whether E-ACT is entitled to rely on section 14(1) FOIA.

Reasons for decision

9. Section 14(1) 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

¹ GIA/3037/2011

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.
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 requests². 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 to the complainant, E-ACT has set out that the complainant has made 10 FOIA requests about Oldham Academy North to E-ACT over a period of 15 months. Those requests amount to 95 individual queries.
16. E-ACT submits that since 2011 it has tracked FOI requests in general, relating to all 23 academies it supports. FOI requests about the Oldham

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

Academy make up 27% of the total whilst the academy with the next highest percentage represents 3% of the total.

17. E-ACT set out in its refusal notice to the complainant that his request was vexatious and would not be responded to. The refusal notice set out that E-ACT believed that the complainant was part of a deliberate campaign to disrupt the Academy and that he was targeting correspondence towards particular employees.
18. The Commissioner has considered E-ACT's submission and accepts that this complainant has initiated a campaign against the Academy. He notes that a campaign can be conducted by one person and in this case he considers that the complainant is persistent in his pursuit of information relating to the Academy and indeed has had a considerable amount of information disclosed as a result of his requests. The Commissioner takes the view that the volume and detail of the requests are excessive, if not obsessive, and there is nothing to suggest that the requests are likely to stop, irrespective of the amount of information disclosed.
19. 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 part of a disproportionate and inappropriate use of the FOIA by the complainant

Harassment to the public authority

20. 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.
21. This particular request is specific to one member of staff and this is not the first time that the complainant has made a request about this individual. The Commissioner has recently issued a decision notice regarding an earlier request in respect of this individual from the complainant. This was issued under reference FS50571593. This request sought information about the individual's salary for each of four years, their qualifications, expenses claimed over each of four years, their role within The Oldham Academy North (the Academy) for each of four years and details of classes taught by the individual and GCSE results of those classes over each of the four years.

22. Although not all of the complainant's previous requests relate to this one individual, it is clear that of all of the staff at the Academy, this individual has been particularly singled out by the complainant. Many of his requests do however relate to staffing issues and performance of the Academy in relation to its staff rather than general performance of the Academy.
23. Although the individual referred to in the request holds a senior position within the Academy, E-ACT has submitted that the level of scrutiny is not proportionate to the individual's role. They do not hold the most senior position. The nature of the request can only be seen as personal; rather than relating generally to academy issues, it is about academy issues relating specifically to that one individual.
24. In terms of harassment, the Commissioner considers that this request coupled with the complainant's previous requests and the level of detail in each of those requests is significant. This would, without doubt, cause significant harassment to those singled out and in particular the subject of this request. In more general terms, the harassment stemming from the requests will impact upon other members of staff who are witnessing the harassment of colleagues. The Commissioner considers that impact on the entire Academy is significant.

Value or serious purpose

25. 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. He has not set out any motive for his requests nor of course does he have to.
26. However, the Commissioner notes that a letter to the complainant, from the Academy, dated 10 December 2013, invites the complainant to visit the Academy at a mutually convenient time to address any other questions he may have.
27. The complainant has not responded to the Academy on this point. This opportunity would have allowed the complainant to open a dialogue which may have been beneficial. It may also have prevented him from submitting further requests and therefore lessened the burden placed upon the public authority. In addressing the issue of whether a request is vexatious or not the Commissioner considers the serious value and purpose of the request and would reasonably expect that an individual who is submitting multiple requests would have welcomed the opportunity to discuss those concerns with the head of that public authority. At the very least he would have expected the individual to decline that opportunity setting out his rationale for doing so. In this case the complainant has continued to submit requests under the FOIA.

28. The lack of response does call into question whether the complainant's motive in submitting this request is a legitimate one, such as to have information disclosed in the public interest, or to make a personal attack and disrupt the Academy. The very personal nature of the request relates to an individual's professionalism and ability to undertake specific tasks.
29. In all the circumstances of this case, the Commissioner is of the view that it undermines any value or serious purpose of the request.
30. Taking account of all of the factors set out in this notice, the Commissioner finds that section 14(1) is engaged.

Right of appeal

31. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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

Alexander Ganotis
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