

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2015

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information about a panel decision. The Department for Education has refused to comply with the request, which it says is vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the Department for Education (DfE) has correctly applied section 14(1) to the request and is not obliged to comply with it. He does not require the DfE to take any steps.

Request and response

3. On 26 February 2015, the complainant wrote to the DfE and requested information in the following terms:

"I now request the following information:

1) Copies of all documentation, evidence, letters correspondence and the like that the Panel relied on it making its determination the police had been notified and made a decision on the [Person 1] case as referenced in the Panels position. And furthermore all like material/evidence the Panel relied on in making the quoted findings as quoted below:

No police investigation had taken place at the time the statement was issued, because the police had determined that no further police action was necessary.

And

It appears that the police subsequently confirmed to the LADO that they would take no further action and this was relayed to [Person 2] by the LADO.

And

The evidence appears to demonstrate that the LADO assumed responsibility for contacting the police regarding this matter and did so on at least two occasions, describing the incidents and the material evidence that had been collected from [Person 1].

And

The Panel concluded that in relation to the forwarding of information to the police, [Person 2] acted appropriately in line with the LADO's advice.

Please note there is now an overriding public interest in this information being released as the Panel's decision once again is contrary to the established and official police position as you have seen.

2) Copy of the letter sent out to parents by the [School] as confirmed by the school after the news of [Person 1's] conduct was reported."

4. The DfE responded on 24 March. It refused to comply with the request which it said was vexatious under section 14(1) of the FOIA.
5. Following an internal review the DfE wrote to the complainant on 24 April. It maintained its reliance on section 14(1).

Scope of the case

6. The complainant contacted the Commissioner on 30 April to complain about the way his request for information had been handled.
7. The Commissioner's investigation has focussed on whether the DfE correctly applied section 14(1) to the request.

Reasons for decision

8. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information under the FOIA, if that request is vexatious.

9. The term "vexatious" is not defined in the FOIA. 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. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
10. 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.
11. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
12. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers the background is relevant in this case.

Background

13. The background to this case is provided in the confidential annex to this notice.
14. The request relates to a safeguarding case at the school in question. A teacher at the school was prohibited from teaching indefinitely because of professional misconduct. The complainant alleges that the head teacher did not refer allegations to the police when he became aware of them and has lied to the press and to parents. However, when the teacher was banned from teaching as a result of an investigation into his activities, no evidence of misconduct was found on the part of the head teacher. The complainant is aware of the investigation and its outcome.
15. The DfE considers that the complainant's FOIA request in this case is part of the aforementioned pattern of complaints and requests. It has lost any serious purpose or value but is made with the intention of

pursuing a personal grievance against the school. The DfE has provided to the Commissioner a log of its correspondence with the complainant from 2009 to August 2014, which shows more than 60 items of correspondence from the complainant. More information about this log is contained in the confidential annex.

16. The DfE believes that responding to this request would not satisfy the complainant but would give rise to further complaints and allegations. It says that the complainant has not accepted any other findings that demonstrate that the head teacher in question has acted appropriately, or judicial directions about the merits of his various legal actions.
17. The DfE has told the Commissioner that the complainant has instigated a number of formal investigations with a range of bodies including the Information Commissioner, Ofsted, National College for Teaching and Leadership (NCTL) and the Parliamentary and Health Service Ombudsman and the Information Tribunal – all complaints about DfE and NCTL were dismissed. The complainant has two judicial review proceedings against the relevant County Council and the school – these have been refused permission at every stage but the complainant has nonetheless appealed them to the Court of Appeal. The complainant has also brought judicial review proceedings against the County Council and the school. Despite the independent status of these investigations and their clear findings, the complainant has not been satisfied with their outcomes.
18. Given this background and history, the DfE reasons that it is highly unlikely that the complainant would be satisfied with any response the Department may provide to the request that is the subject of this notice. It considers that the complainant would seek to prolong his interventions, at considerable and unjustifiable cost to the public purse.
19. The DfE has gone on to provide evidence in support of some of the criteria for vexatiousness identified at paragraph 9:
20. **Personal grudge** – DfE says that it believes it is clear that the complainant is seeking to discredit the head teacher of the school by any means possible. Evidence against this criterion is provided in the confidential annex.
21. **Unreasonable persistence** – the DfE has repeated its belief that the complainant is seeking to pursue his ends by any means available to him. His diverse complaints have been investigated by a range of independent regulators and the courts as well as by the public authorities directly involved, but any adverse decision – which the DfE

says is many of them – is disregarded or immediately appealed by the complainant.

22. The DfE has provided as an example the occasion when the complainant applied for judicial review against the Secretary of State in 2010. The Deputy High Court Judge refused permission and declared the case to be '*totally without merit*'. It was then renewed to an oral hearing at which a different Deputy High Court Judge once again refused permission and declared the case to be '*totally without merit*'. Nonetheless, the complainant then applied for permission to appeal to the Court of Appeal but this was dismissed as, again, being '*totally without merit*'.
23. **Unfounded accusations** – the complainant has made a number of unsubstantiated allegations about the school and its leaders. For example, the complainant has alleged that the school is incompetent and failing in the way it provides education for children with special needs. DfE says that the school has acknowledged that there have been shortcomings in its record keeping when it moved from a paper to electronic system. However, DfE has told the Commissioner that an Ofsted inspection report found that '*Disabled students and those with special educational needs, and students who are eligible for the pupil premium, are very well cared for and many make outstanding progress.*'
24. **Intransigence** – the DfE says its log of correspondence with the complainant demonstrates that the complainant has submitted frequent and overlapping correspondence about the same issues.
25. **Deliberate intention to cause annoyance** – evidence against this criterion is provided in the confidential annex.
26. **Scattergun approach** – the DfE argues that the complainant has pursued every avenue open to him in the hope of receiving information that will enable him to reopen proceedings. Evidence against this criterion is provided in the confidential annex.
27. **Futile requests** – the DfE has acknowledged that this specific request has not previously been addressed by the complainant. However it says that it believes that the request forms part of a pattern of futile requests and behaviour over the last five years – issues that the complainant raises are conclusively addressed and resolved by bodies up to the Court of Appeal – but to no avail, the complainant persists in what appears to the Commissioner to be his campaign against the school and its leadership. The DfE argues that the wider context and history demonstrates that this request has lost any serious value or purpose and amounts to an abuse of the complainant's right of access to information under the FOIA.

28. Having considered the DfE's submission and all the circumstances of this case, the Commissioner is inclined to agree that the complainant's request, and the background to it, meet a sufficient number of the criteria at paragraph 9 as to make the request vexatious.
29. The Commissioner notes in his guidance on section 14(1) that the Information Tribunal in *Dransfield* (2012) concluded that 'vexatious' could be defined as '*the manifestly unjustified, inappropriate or improper use of a formal procedure*'. The Tribunal's decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious. This being the case, the Commissioner has finally considered whether the complainant's request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In addition to considering the background to the request and the degree to which the request meets any of the criteria at paragraph 9, he has also therefore weighed the likely impact on the authority and balanced this against the purpose and value of the request.
30. As previously mentioned, the complainant alleges that the school's head teacher did not refer allegations about a particular teacher to the police when he became aware of them – this is the matter to which the request refers. The DfE says that it holds information within the scope of the complainant's request that demonstrates that the head teacher did, in fact, refer the allegations to the local authority, which passed them to the police. No evidence of misconduct was subsequently found on the part of the head teacher.
31. The Commissioner's view is that the specific concern that the complainant may have about the school, and which is the subject of his request, has been adequately addressed through the internal investigation and is the subject of an ongoing internal police investigation. He is therefore of the view that the request is not of sufficient value to justify the disruption to the DfE that responding to it would cause, when also set against the wider background and context of the request.
32. The complainant has told the Commissioner that it is in the public interest for the information he has requested to be released because the DfE has made an "irrational" decision contrary to the facts, about the previously discussed safeguarding matter. He says the DfE is involved in a "cover up" and wants to suppress information being released, which would establish the cover up beyond doubt. The Commissioner notes the complainant's assertions but notes too that the complainant has not provided any evidence to support these claims. The complainant has also argued that it is only the request that can be categorized as

vexatious and not the requester. However, a public authority, and the Commissioner - as he has done in this case - can consider the wider background to a request when considering whether it is vexatious.

33. The Commissioner is consequently satisfied that the complainant's request is vexatious and that the DfE is correct not to comply with it under section 14(1) of the FOIA.

Right of appeal

34. 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

35. 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.
36. 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

Pamela Clements
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