

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2018

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 relating to the procedures followed by the Department for Education (DfE) when refusing a previous request under section 36 – inhibition to the free and frank exchange of views and advice. The DfE refused the follow up request under section 14(1) on the basis that it was vexatious.
2. The Commissioner's decision is that the DfE has not demonstrated that the follow up request is vexatious. Therefore the Commissioner finds it is not entitled to refuse to respond to the request under section 14(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request without relying on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made a request to the DfE on 9 February 2017 which was refused under section 36 of the FOIA – inhibition to the free and frank exchange of views and advice. That request is referred to as the

'original request' in this notice. On 28 May 2017 the DfE provided the complainant with the outcome of an internal review of its handling of the original request. The review upheld the DfE's application of section 36. This prompted the complainant to make, what will be referred to as, the 'follow up' request the same day i.e. 28 May 2017. The follow up request was:

"May I please request from you copies of all the documentation / communications created / held in respect of the establishment of the Department's journey to outcome in my original request and the internal review. The request is for all the papers relating to the handling of the request and review, the documents and commentary evidencing the whole audit trail of communications that culminated in the engagement of section 36 (2)(c) for the request and the upholding within the review."

It is this follow up request which is the subject of this notice.

6. On 27 June 2017 the DfE responded. It refused the follow up request under section 14(1) on the basis that it was vexatious.
7. The complainant requested an internal review on 15 August 2017. The DfE sent him the outcome of its internal review on 1 September 2017. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner 30 November 2017 to complain about the way his request for information had been handled. He argues that his request should not be deemed vexatious because he had a serious purpose in making it, i.e. to test whether the department had followed the correct procedures when applying section 36 to his original request.
9. The engagement of section 36 is dependent on a public authority obtaining the opinion of their qualified person that disclosing the requested information would cause some form of prejudice to the conduct of public affairs, in this an inhibition to the free and frank exchange of views and advice. The complainant doubted that the DfE had in fact obtained such an opinion. His grounds for believing this to be the case is based on correspondence he received from the department during its handling of his request which referred the qualified person as a male, only for the DfE to later advise him that the qualified person had been Caroline Dinenage. He argues that the qualified person's opinion was only obtained once he challenged the department's application of section 36 and doubted the opinion had been sought until after it had carried out its internal review.

10. The Commissioner considers that the matter to be decided is whether the follow up request for information about the procedures followed when obtaining the qualified person's opinion can be refused by the DfE on the basis that it is vexatious.

Reasons for decision

Section 14(1) – vexatious requests

11. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. The term 'vexatious' is not defined in the FOIA. However the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her 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
13. 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.
14. 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 on it and balance this against the purpose and value of the request.
15. Where relevant, public authorities may also need to take into account wider factors such as the background and history of the request.

16. The history of this complaint goes back to 2011 when the complainant, raised a number of complaints with a local school. He did not consider those complaints had been dealt with appropriately and so, in 2012, he escalated his concerns to the DfE whose School Governance Unit (SGU) then started an investigation. The SGU issued a Complaint Report in May 2015 which found that the school in question had not carried out its legal obligations and advised it to take corrective action. It is understood that the school failed to carry out those actions.
17. The complainant then made a service complaint against the SGU as he did not consider it had handled his complaint to them appropriately. This led to a full re-consideration of the issues raised by the complainant, this time by the Schools Complaint Unit (SCU), in order to ensure the matters had been dealt with impartially. This led to the SCU issuing a final Complaint Report to the complainant in September 2017; appropriate assurances were received from the school in January 2018 at which point the DfE considered the matter closed.
18. On 9 February 2017, prior the CSU's final Complaint Report, the complainant requested information relating to the contact one particular DfE official had had with a number of other parties, both internal and external, all of whom had some connection with his complaint against the school. That request was refused on 3 March 2017 when a DfE official advised the complainant that the department considered the information was exempt under section 36(2) of the FOIA. As referred to earlier, section 36(2) can only be engaged if, in the opinion of the qualified person, disclosing the information would cause the prejudice specified, in this case the inhibition of the free and frank exchange of views or provision of advice. If the qualified person's opinion has not been obtained then the exemption is simply not engaged.
19. The refusal notice went on to say that even though the exemption was engaged it was subject to the public interest test and, as permitted under section 10(3), the DfE was extending the time for providing a final response in order to properly consider the public interest test. The DfE said it expected to have concluded its consideration of the public interest test by 31 March 2017. Where a public authority extends the time for responding to a request in this way it is required, under section 17(3), to issue a second refusal notice once it has concluded its consideration of the public interest test. It should be noted that although the opinion of the qualified person (in the case of government departments this is a minister) must be obtained to apply the exemption, the public interest test can be carried out by any official.
20. On 31 March 2017 the DfE issued its second refusal notice. The notice explained that after considering the competing public interest arguments it had decided the public interest in maintaining the exemption outweighed the public interest in disclosing the information and that

therefore it was continuing to rely on section 36 to withhold the information. Before setting out the different public interest arguments however the letter addressed the initial engagement of the exemption and its concerns that disclosing the information was likely to inhibit free and frank discussions. The notice stated that,

“... a Minister has decided that, in **his** reasonable opinion, disclosure of the information requested is likely to have this prejudicial effect ...”
[emphasis added].

21. There then followed further correspondence with the complainant, including a request on 3 April 2017 that the DfE carry out an internal review of its decision to refuse the original request under section 36. As part of this continuing dialogue the DfE advised the complainant that the Minister acting as qualified person in this instance was Caroline Dinenage, who it is understood to be the Minister with responsibility for freedom of information within the DfE. The DfE completed its internal review and informed the complainant of the outcome on the 22 May 2017. It maintained its decision to withhold the information under section 36.
22. Having exhausted the DfE’s internal review procedures the complainant was free to complain to the Commissioner, which he did. During the investigation that followed the Commissioner established that the DfE had not actually sought the qualified person’s opinion until 17 March 2017 at the earliest and that no opinion had been obtained from a qualified person until 27 March 2017. As explained in the resulting decision notice FS50723591¹ issued on 21 August 2018, this means that at the time the DfE initially refused the request on 3 March 2017, claiming section 36 was engaged, the exemption was not in fact engaged. The exemption was only engaged on 27 March, four days before the end of the period which the DfE claimed to be using to consider the public interest in maintaining the exemption. During her investigation the Commissioner did establish that the qualified person was Caroline Dinenage and ultimately the decision notice concluded that the DfE could rely on section 36.
23. It should also be noted that since the DfE refused the original request under section 36 on 3 March 2017 there has been extensive dialogue between the DfE and the complainant. The complainant’s immediate response was to say the application of section 36 was “surprising” and “outrageous” on 3 March, later the same day he asked for a copy of the guidance on section 36 used by the DfE. In response the DfE provided a link to the Commissioner’s guidance on the FOIA on the 22 March. The same day the complainant made it clear that this was not the

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259688/fs50723591.pdf>

information he wanted and emphasised that his request was for the DfE's departmental guidance on section 36. On 31 March the DfE issued the second of its refusal notices in respect of the original request stating that after consideration of the public interest test it was maintaining its reliance on section 36 to withhold the information. The complainant requested an internal review on 3 April.

24. On 11 April the DfE emailed the complainant in relation to a request it said it had received on 17 March, but which appears to quote his correspondence of 22 March in respect of the DfE's section 36 guidance. In its correspondence of 11 April the DfE seems to provide information which comprised of a very brief introduction to the basic points of section 36 followed by a link to further guidance. The complainant emailed the DfE the following day, 12 April, to say the link did not work and reiterated he was seeking the DfE's own internal guidance and asked for the name of the DfE colleague who had advised on the engagement of section 36. The DfE responded on 27 April. The Commissioner's interpretation of that response is that the DfE clarified that its internal guidance was limited to the brief introduction of the basic points of section 36 as provided earlier, beyond which it relies on the Commissioner's guidance. The DfE also sought clarification as to whether the complainant was after the name of its qualified person when referring to the colleague who advised on the engagement of section 36. The complainant replied the same day confirming that he was seeking the name of the qualified person and also that he wanted to know the relationship between the official he was dealing with and the individual who had been the focus of his original request. On 1 May 2017 the complainant contacted the DfE again expressing frustration that the link it had provided on 27 April did not work (the Commissioner notes that the link does not open) and asking for the date any internal guidance was authored.
25. On 8 May the complainant chased the DfE for the outcome of the internal review into the refusal of his original request under section 36. This was just over the twenty working days which the Commissioner considers should be sufficient for most internal reviews to be carried out. The DfE emailed a reply the same day advising him that it already explained, on 5 May, that the internal review would be late; it went on to say the DfE was concerned this may indicate he was not receiving all the emails it sent him. This prompted the complainant to assert his email system was working fine and to ask for DfE's email logs.
26. This pattern of correspondence continued with the complainant feeling the need to chase the DfE for responses and then feeling the eventual responses were inadequate resulting in further requests, whilst at the same time the internal review of the refusal of the original request continued. The DfE's final decision on the original request was communicated to the complainant on 22 May and on 28 May the

complainant made his follow up request for all documents relating to the application of section 36 which was subsequently refused under section 14(1) and which is now the focus of this notice.

27. In arguing that the follow up request for information on the application of section 36 is vexatious the DfE considers that no response it provided would satisfy the complainant; that any response would simply lead to further complaints and allegations. It argues that the complainant has rarely accepted previous findings regarding the outcome of any complaints that do not support his views. It believes that this pattern of behaviour would continue in respect of the DfE's handling of the original request and the refusal of that request under section 36. The DfE has also claimed that the complainant has submitted a number of information and subject access requests in the past and assumes that he would continue to do so, responding to this request would encourage him to follow up each new request with, what is referred to as, a meta-request, i.e. a request for the information generated when processing a previous request.
28. At this point it is appropriate for the Commissioner to comment that the DfE has not provided any details of the number of requests the complainant has made to it. She is aware however of a couple of freedom of information requests that have resulted in subsequent complaints to her office. The Commissioner would add that it would be wrong for a public authority to automatically view any so called meta-request as being vexatious. As explained in her guidance, 'Requests about previous information requests (meta requests)², there is a public interest in increasing the transparency of the request handling process and that there is nothing intrinsically vexatious about a request for information about a request.
29. In this particular case the complainant did have some grounds for suspecting that the DfE had failed to follow the correct process when applying section 36. In its public interest refusal notice of 31 March 2017 it had referred to the qualified person as a male when the minister in question was Caroline Dinenage. The Commissioner has established that by then the DfE had in fact obtained an opinion, albeit only a few days earlier. Therefore it may be that the reference to the qualified person being a male was simply a typographical error. However it has already been established through the Commissioner's investigation into the handling of the complainant's original request that the opinion had not been obtained when the DfE initially claimed the information was exempt under section 36 i.e. in its first refusal notice issued on 3 March 2017.

² <https://ico.org.uk/media/for-organisations/documents/1620/requests-about-previous-requests-for-information-meta-requests.pdf>

30. The Commissioner also notes more generally that the complainant does appear to have had some grounds for pursuing the issues he has raised first with the local school and then the DfE and challenging the findings of those who have examined his complaints. His complaints about the school resulted in the DfE investigating and issuing Complaint Reports finding that the school had failed to meet its legal obligations, his complaint to the DfE about how its first investigation was clearly taken seriously enough for the DfE to think the matter warranted a full review. The Commissioner recognises that this does not mean that the DfE fully upheld the complainant's complaints, nor is she aware of the nature of his complaints. Nevertheless it does appear that without showing a degree of tenacity the complainant would not have established that the school had failed in some of its responsibilities and presumably that there were also flaws in the DfE's initial investigation of those concerns. The DfE itself has acknowledged that there was some substance to his complaints.
31. As far as the complainant's dialogue with the DfE since it refused his original request under section 36 is concerned, again the Commissioner recognises that he had grounds for querying when the qualified person's opinion was obtained, even if ultimately it appears that the evidence he relied on was a typographical error. Although the Commissioner may not have seen the full chain of emails that were generated after the DfE informed him of its application of section 36, the Commissioner has some sympathy with his obvious frustration with the responses he received from the DfE when trying to better understand how it had handled his original request. The issue though is how this manifested itself. The Commissioner detects a tendency for the complainant to respond to the DfE by immediately requesting evidence to support its position, for example the request for email logs in response to what appears to have been a genuine attempt by the DfE to clarify what issues it had already dealt with. There is a sense that the complainant is interrogating the official. The Commissioner also notes that the complainant sought details of the relationship between the official he was dealing with and the official who was the focus of his original request. This could be interpreted as somehow questioning the official's integrity, or competence and, whether the complainant recognises it or not, this personalising of the issues can be oppressive.
32. In support of its position that the follow up request is vexatious the DfE has referred to the Commissioner's guidance and argued that since the request serves little or no purpose the impact of dealing with the request cannot be justified.
33. The department claims the request has no obvious relevance to the complainant's stated aims which going back to 2012 were to seek support in having his complaint against his local school properly investigated. At that time the school was maintained by the local

authority. That matter was concluded in January 2018 (after his latest request was refused under section 14) and the complainant has had access to the case file under the DfE's normal procedures. The DfE says that the complainant has continued to contact the department seeking details of its engagement with the school after it had converted to an academy. It argues that such details can have no bearing on the complainant's original concerns.

34. The Commissioner notes that the request which the DfE has refused under section 14 was about its application of section 36, not about the DfE's engagement with the school. Nevertheless she accepts the DfE's general point that the subject of the complainant's latest request is far removed from the issues that first lead to him challenging the actions of his local school. The Commissioner does not however consider this means the request has no value or purpose. There is a value in probing the rigour with which public authorities apply the exemptions available to them in order to refuse the public's access to information. This is particularly the case in respect of section 36 which provides a very wide ranging exemption; the safety check to prevent its misapplication is that it depends on the opinion of a senior official within the public authority before it can be engaged. With central government departments the qualified person is a minister who has a great many demands on their time and to whom access may be limited. Where there is a possibility of difficulties being encountered in obtaining an opinion there is a value in testing whether the correct procedures have indeed been followed.
35. Another argument presented by the DfE in support of its position that the follow up request has no purpose or value is that it forms part of a pattern of making requests on issues that have already been fully considered. Furthermore the DfE claims that after exhausting formal departmental channels, which the Commissioner understands to mean that the DfE has now finished its investigation of the complaints about the school prior to its conversion to an academy, the complainant has tried to extend his engagement with the DfE by making information requests to the Education and Skills Funding Agency. The Commissioner notes that the DfE's final Complaint Report was not issued until September 2017; sometime after both the time of the original request refused under section 36 and the follow up request was refused under section 14. Therefore the Commissioner does not accept that the follow up request related to a matter that was already closed.
36. The DfE has provided the Commissioner with examples of what it says are requests submitted on a regular basis for the same sort of information but over slightly amended time periods. One of the examples provided included a request for communications between a named official and a list of other named parties between 1 May 2016 and 9 February 2017. The DfE claims much of the requested information was the same as that which had been captured by previous requests,

but it has not provided the details of those requests. The DfE has provided examples of subject access requests for communications with similar lists of named individuals. The first subject access request covers a period from 13 September 2016 to 12 May 2017, the second from 4 April 2017 to 10 August 2017. Again the Commissioner is not convinced the evidence provided by the department is particularly relevant to the specific request for information on the department's application of section 36. The two subject access requests were also made after the follow up request was made. This means they could not have been used to inform the DfE's decision to refuse the follow up request under section 14. However it could be argued that they are evidence that concerns which existed about the pattern of request making at that time turned out to be well founded.

37. The DfE has also provided examples of correspondence with the complainant, this time from September 2017, to support its final argument as to why the follow up request serves no real purpose. The DfE argues that the complainant refuses offers to refer matters for independent investigation or ignores the finding of an independent investigation. The Commissioner notes that the exchange in September 2017 postdates the follow up request. The exchange consists of the complainant asking the DfE to ascertain the legal position of the school's head teacher holding some form of informal meetings which the complainant considers was done with the intention of taking information outside the scope of requests under the FOIA. He explicitly states that he does not wish the DfE to refer him to the Information Commissioner's Office. The DfE respond by stating that regardless of his wishes, the matter he has raised is one for the Commissioner to consider.
38. The Commissioner is not persuaded that this is a particularly strong example. Although clearly the matter would be one for the Commissioner, the correspondence could be interpreted more of an attempt by the complainant to bring to DfE's attention to other problems he believes exist at the school which may reflect more generally on its performance.
39. The DfE has then moved on to discuss the indicators that a request may be vexatious and considered how they apply to the complainant's request.
40. It argues that there is evidence that the complainant has used aggressive or abusive language in pervious requests and correspondence. Some of the examples of the language used, whilst expressing dissatisfaction and frustration with the department, do not strike the Commissioner as being particularly abusive. For example on one occasion the complainant says, "This matter remains a complete disgrace by the impotent and ineffective DfE." This was is an email dated 10 September 2017, which postdates the follow up request. The

Commissioner notes that the actual request refused under section 14 request contained nothing that could be regarded as abusive or aggressive language. It is a politely phrased request by any standards.

41. The other example provided by the DfE is from the original request which was refused under section 36. The Commissioner is satisfied that this request contains language that targets one particular DfE official, and questions her competence and integrity in forceful terms. The subject of that request is understood to relate to the particular DfE official's involvement in the handling of the complainant's complaints against the school. There is clearly a connection between that request and the follow up request, but the tone of the language used in the original request does not follow through in to the follow up request.
42. Another indicator of a vexatious request which the DfE claims to be present is that it would be grossly oppressive to meet the request in terms of the strain on time and resources. The Commissioner considers this very much overstates the position. The DfE makes the point that the complainant has been in touch with the department since 2012. Investigating his complaints against the school has taken a considerable amount of resources and during those investigations it has already provided him with extensive information. It argues that to provide a response to his follow up request now that the investigation of those complaints has concluded would be burdensome. The Commissioner would counter that the final Complaint Report had not been issued at the time of the follow up request and it seems unlikely that the provision of information that the department had only just generated when refusing the original request would involve the use of many resources. More importantly however the Commissioner is not satisfied that it is appropriate, in these circumstances, to consider the amount of resources already used in investigating the complaints against the school. This is because there appears to have been at least some foundation to the complainant's concerns and the time spent investigating those concerns is by no means wholly dependent on the complainant; to a large extent the engagement of the school would also have a bearing on the time taken. The Commissioner also notes that the DfE had cause to fully review the initial investigation of the complaints. As a consequence the Commissioner does not give any weight to this argument.
43. The next indicator which the DfE argues is present is the existence of personal grudges. The Commissioner accepts that the original request which was subsequently refused under section 36 did appear to target a particular DfE official. The Commissioner has also noted in paragraph 31 above that there was a suggestion that the complainant was beginning to question the competence and integrity of the official who was handling his requests. However the Commissioner is less convinced that

the follow up request can be characterised as a continuation of that pattern.

44. The DfE also claims that the follow up request indicates unreasonable persistence. It considers the request is an attempt by the complainant to reopen issues that have already been concluded by the completion of two independent enquiries into his complaints against the school. Again the Commissioner notes that the request was made prior the issuing of the final Complaints Report.
45. In support of its position the DfE has said that the complainant contacted the Department in excess of eighty different times in relation to the school. The Commissioner considers this must be looked at against the backdrop of a process which ran for six years. It is also possible that some of those contacts were generated by a need to chase deadlines or to seek clarification of issues. Nevertheless eighty contacts equates to over one a month and is indicative of a degree of persistence.
46. The DfE claims the follow up request is part of a pattern of making unfounded accusations. In particular the DfE points to his allegations against the official who was the focus of the original request. The Commissioner considers this matter has already been taken into account when considering the 'personal grudges' indicator.
47. The next indicator claimed by the DfE is that the request demonstrates intransigence. It has provided the Commissioner with examples of correspondence from the complainant dated 15 December 2017 and 21 January 2018, both of which postdate the request which is the focus of this notice. Those emails demonstrate that ultimately the complainant was not satisfied with how the investigation of his complaints against the school had been concluded and signalled an intention on his part to continue to pursue the matter. The Commissioner recognises that these may have a bearing on the status of requests made about his actual complaints against the school or how they were dealt with by the DfE. However it is more difficult to link that correspondence to the actual follow up request which challenged the DfE's application of section 36 to the original request, particularly since he had some basis making his challenge because of the department's contradictory references to the qualified person, i.e. the qualified person being initially referred to as a male, only to be later identified as Caroline Dinenage.
48. The penultimate indicator identified by the DfE is that the complainant has made frequent or overlapping requests. The Department has referred the Commissioner to the examples provided earlier in its submission. Unfortunately these examples consist of two subject access requests, the original freedom of information request which was refused under section 36 and the follow up request which is the subject of this

notice. In respect of the subject access requests, these cover the same, or similar information, but for different time periods and were made some four months apart. The Commissioner finds that these examples are not strong evidence of that the complainant makes frequent or overlapping request. Nor has the DfE provided the Commissioner with the overall number of requests submitted by the complainant.

49. Having said that the Commissioner cannot ignore the email chains of correspondence surrounding both the original and follow up request that the complainant has submitted. These are discussed in more detail in paragraphs 22 to 26 above. Following its initial refusal of the original request under section 36 on 3 March 2017, the complainant requested the department's internal guidance the same day. This was followed by a request on 12 April for the name of the DfE colleague who advised on the application of section 36. When, on the 27 April, the DfE sought clarification of whether this was a request for the name of qualified person, the complainant responded the same day to confirm that it was and at the same time expanded his request to seek details of the official he was dealing with. On 1 May he asked for the date the internal guidance on section 36 had been authored and then, following the DfE's suggestion that perhaps he had not received all their emails, he asked for the department's email logs on 8 May 2017. This pattern of request making is unhelpful at best and does provide some grounds for viewing the follow up request as being vexatious.
50. The DfE's final argument is that the request is futile in that the issues raised by the complainant have been comprehensively reviewed by the department and the final Complaint Report has now been sent to him.
51. Although the Commissioner recognises that the complainant's follow up request could be seen as demonstrating a strong reluctance to let go of his primary concern, his complaints against the school, now that the investigation into them was drawing to a close, the Commissioner considers that there is room to draw a distinction between any requests directly relating to that matter and his enquiries surrounding, what he had grounds for believing to be, a flawed application of section 36 to one of those requests. The Commissioner does not accept the follow up request was futile.
52. In conclusion the Commissioner finds that in isolation there is nothing vexatious about the follow up request. The DfE's reliance on section 14(1) would therefore depend on its demonstrating that this request was part of wider pattern of request making and interactions which, taken as a whole, would render the request vexatious. The DfE has provided the Commissioner with an explanation of the context in which the follow up request was made. Having looked at the DfE's submission, the Commissioner recognises that there is evidence to indicate a level of persistence and a tendency to pursue personal grudges when the

complainant is addressing matters directly relating his complaints against the local school and the DfE's investigation of those complaints.

53. However the Commissioner is satisfied that on this occasion a distinction can be drawn between his engagement with the DfE on those matters and his request for information about its application of section 36 to his original request. This is in part because at the time he made his follow up request he did have grounds for questioning whether the correct procedures had been followed. There is a genuine value in examining how public authorities handle requests, particularly when using such a potentially wide exemption as section 36. The value in responding to this request has to be weighed against the impact doing so would have on the DfE.
54. The Commissioner is not convinced that responding to the request would demand any great resources. Nor was the refusal of the follow up request under section 14(1) necessary at that stage to prevent the complainant making a continual stream of requests followed by so called meta requests. If evidence of such a pattern of request making emerges in the future the DfE would still be able to assess that evidence and, if it supported the application of section 14(1), refuse a future request on the grounds that it was vexatious. The DfE has argued the burden of compliance has to be seen against the resources already used in investigating the complainant's complaints against the school, but the Commissioner is reluctant to accept that argument because by the DfE's own admission the complaints had some substance and, in any event, the time taken to investigate the complainant's concerns would not be determined solely by his own conduct or engagement in the process.
55. Therefore despite the request being made in the aftermath of the department's initial refusal of the original request, when the complainant did make a series of overlapping requests, the Commissioner is not satisfied that the DfE has made its case that this particular request can be deemed vexatious. The Commissioner finds that the DfE is not entitled to refuse the request under section 14(1).

Right of appeal

56. 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

57. 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.
58. 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

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