

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2018

Public Authority: Shaw Education Trust
Address: The Lodge, Wolstanton High School
Milehouse Lane
Wolstanton
Newcastle-under-Lyme
Staffordshire
ST5 9JU

Decision (including any steps ordered)

1. The complainant has requested information relating to the Shaw Education Trust ("the Trust"). The Trust refused to comply with the request in reliance on section 14(1) of the FOIA on the grounds that it was vexatious.
2. The Commissioner's decision is that the Trust was entitled to rely on section 14(1) of the FOIA to refuse to comply with the request and requires no steps to be taken.

Request and response

3. On 19 March 2018, the complainant wrote to the Trust and requested information in four separate emails in the following terms:

"Please provide me with copies of any correspondence (by email, post or telephone) between Shaw Education Trust (this includes any member of staff employed by the trust or Castlebrook High School) and the Bury Times."

"Please provide me with copies of any correspondence (by email, post, telephone or social media) between Shaw Education Trust (this includes any member of staff employed by the trust or Castlebrook High School) and the Spotted Unsworth group on

Facebook.”

“Please provide me with a breakdown of how staff redundancies which took place in December 2017/January 2018 have affected the budget of Castlebrook High School.”

“Please provide a full, up to date organisational chart of staff employed at Castlebrook High School and their salary and/or salary band. Please also provide an organisational chart of staff employed at Castlebrook High School and their salary and/or salary band as of March 2017.”

4. The Trust responded on 17 April 2018 and refused to provide the requested information, citing section 14(1) of the FOIA.
5. Following an internal review, the Trust wrote to the complainant on 3 May 2018. It maintained its original position that it considered the request to be vexatious.

Scope of the case

6. The complainant contacted the Commissioner on 8 May 2018 to complain about the way his request for information had been handled. He did not provide any direct argument to the Commissioner either when he submitted his complaint or later, other than his desire to continue with the complaint.
7. The Commissioner considers the scope of this case to be the Trust’s application of section 14(1) to the request.

Background

8. The Shaw Education Trust is a multi-academy trust that currently consists of twelve academies. The Commissioner understands that the Department for Education has often asked the Trust to give support to schools requiring intervention. Sometimes the Trust takes over schools with existing financial deficits.

Reasons for decision

9. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if held, to have that information communicated to them.
10. Section 14(1) of the FOIA states that a public authority is not obliged to respond to a request for information if the request is vexatious.
11. The FOIA does not define the term "vexatious". The Upper Tribunal (UT) considered the issue of vexatious requests in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013). The UT decided that the dictionary definition had limited use and that it depended on the circumstances surrounding the request. The UT defined it as a *"...manifestly unjustified, inappropriate or improper use of a formal procedure."* (paragraph 27). The approach in this case was subsequently upheld in the Court of Appeal.
12. The Dransfield judgment also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the UT when it defined the purpose of section 14 as being -

"*...concerned with the nature of the request and ha[ving] the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..."* (paragraph 10).

14. The Commissioner's guidance¹ explains that the UT's decision established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
15. The Commissioner has also identified a number of indicators which may be useful in identifying vexatious requests. They include (amongst others):
 - The burden on the authority.
 - Unreasonable persistence.
 - Unfounded accusations.
 - Intransigence.
 - Frequent or overlapping requests.
 - Deliberate intention to cause annoyance.
16. The fact that a request contains one or more of these indicators will not necessarily mean that it is vexatious. All the circumstances of a case need to be considered in reaching a judgement. Where relevant, public authorities may also need to take into account wider factors such as the context and history of the request.
17. The Commissioner's guidance suggests that if a request is not clearly 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 aim to objectively judge the impact on itself and weigh this against any evidence about the purpose and value of the request.

The complainant's view

18. The complainant's view, as expressed in his internal review request to the Trust, is that a public authority as a recipient and/or distributor of public funding should respond to all requests. He stated that whether the PA feels it is a waste of time

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

or a waste of funding is irrelevant because the Trust is a publicly funded body.

19. He further argued that it is the request, not the requester (in line with the Commissioner's view) that is vexatious and for this reason his request could not be refused. He accused the Trust of obstructing his attempts to access information and obscuring information that should be made readily available to the public.

Shaw Education Trust's view

20. The Trust has emphasised to the Commissioner that it takes its duties seriously under the FOIA and considers that it did not take the decision lightly in viewing this request as vexatious.
21. The Trust suggested that the arguments in its response and subsequent review are persuasive because it took account of the Commissioner's guidance regarding its application of section 14(1) and adhered to it.
22. The internal reviewer stated (in line with the Commissioner's advice) that context and history could be taken into account even if the FOIA was applicant blind. He acknowledged that this request, viewed in isolation, could not be considered "vexatious". However, when viewed in context with the number and subject matter of the complainant's other requests, it was vexatious. The Trust's core educative purpose was in danger of being compromised by diverting resources into responding to his frequent requests. The Trust offered to try and resolve any underlying concerns with the complainant by suggesting that the complaint route or a meeting with a senior person from the Trust might be more appropriate.
23. The Trust provided a chronology of the complainant's requests and the Trust's responses since September 2017 to underpin its arguments to the Commissioner. There were some thirteen emails from the complainant between September 2017 and March 2018 containing requests. Responses from the Trust elicited further ongoing correspondence expressing dissatisfaction with the responses. The Trust argues that there is a theme to these requests that relates to financial and management decisions regarding Castlebrook High School. The Commissioner notes that there is also a theme regarding redundancies and restructuring.
24. The Trust states that it has tried to respond to the complainant's requests in the interests of transparency and that approximately 80 hours has been spent on this task since September 2017. For a small administrative team it had reached a stage where

responding was becoming a disproportionate and unjustified use of resources. The Trust feels that the requests have no inherent value or purpose.

25. The complainant has been offered an alternative means of addressing any concerns he may have via the Trust's suggestion that he submit a formal complaint or meet with the Chief Operating Officer. The Trust suggests that there may be a personal reason for making these requests but that this is ultimately unknown. It explained to the Commissioner that there was a statutory consultation process and that the Trust participated in a public consultation meeting before Castlebrook High School converted to academy status. There was also a statutory consultation process for those affected by the restructuring exercise. In other words, individuals with a legitimate interest had recourse to a formal process.

The Commissioner's position

26. Having considered the context and history of this request, the Commissioner agrees that the complainant appears to be engaged in questioning the Trust's financial and management decisions via a series of freedom of information requests as a result of his apparent concern with Castlebrook School having been taken over by the Trust.
27. The Commissioner accepts that there is a value in public scrutiny of the financial and management decisions regarding academy trust schools. She also accepts that there is a public interest in how public money is spent. It is probable that there was a serious purpose behind the requests but the value in continuing with them has become increasingly questionable in circumstances where a formal consultation process has been concluded and subsequent restructuring taken place.
28. The Trust believes the requests are being made for personal reasons, due to the level of persistence and dissatisfaction with its responses. The Trust's response to the complainant stated that the request was designed to cause disruption and annoyance when viewed in the light of the overall correspondence. The Commissioner agrees that there is a cumulative effect to the requests, that this request contributes to the burden on the Trust, and that the reasoning it has applied to this particular request has a sound basis.
29. There is a fine line to be drawn between reasonable and unreasonable persistence. The fact that the complainant sent frequent or overlapping requests is an indication that he was not

prepared to consider the pressure on the Trust and the many hours spent responding to these requests over a relatively short space of time. In fact, the complainant had been asked to narrow the scope of a previous request in order that the Trust could comply with it but he did not do so. The chronology shows that on 30 November 2017 the complainant emailed four times to make request/s with seven minutes between the first and last email. Similarly, there were six minutes between the first and last (of four) emails that comprised the request that is the subject of this notice. This indicates an unreasonable level of persistence and supports the Trust's view that the request is vexatious.

30. The Commissioner, having considered all the circumstances of the case, agrees that an unreasonable burden has been imposed on the Trust by the complainant making many related requests over a short timeframe with no indication that he is likely to be satisfied with the responses. The Commissioner's guidance states that the use of section 14 should not be a last resort and the fact that the Trust has applied it before reaching that point does not make it inapplicable.
31. The Commissioner has therefore determined that the Trust is entitled to rely on section 14(1) of the FOIA.

Right of appeal

32. 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

33. 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.
34. 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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