

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 February 2020

**Public Authority:** The Hill Primary School  
**Address:** Peppard Road  
Emmer Green  
Reading  
RG4 8TU

*[A substantial proportion of the published version this decision notice has been redacted because of the sensitivity of the issues involved. The redactions are marked]*

### Decision (including any steps ordered)

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1. The complainant has requested a number of policies she believes should be in place. The Hill Primary School ("the School") initially denied holding some of the information but subsequently decided to refuse the requests as vexatious.
2. The Commissioner's decision is that the requests were vexatious and thus the School was not obliged to respond to them. However, she also finds that the School failed to advise the complainant, within 20 working days, that the requests were vexatious and thus breached section 17 of the FOIA.
3. The Commissioner does not require further steps to be taken.

### Background

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4. [Redacted]
5. [Redacted]
6. [Redacted]
7. The complainant has made complaints to the School, Ofsted, Reading Borough Council, the Local Authority Designated Officer (LADO), the Department for Education and [Redacted]. Some of the complaints

remain pending at the date of this notice, but none of the complaints which have reached completion appear to have identified significant failings on behalf of the School.

## Request and response

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8. The complainant first contacted the School on 8 September 2019 to request information in the following terms:<sup>1</sup>

*"[1] Please could I have a copy of the schools absence/sickness policy which I believe is different to the attendance policy.*

*"[2] Can I also please get a list of all the school's policies and procedures so that I can check over if there are any others I may wish to have a copy of that aren't available online."*

9. On 19 September 2019, the School responded. In respect of element [1], it noted that it did not have a separate policy covering this area but that its attendance policy covered the relevant issues. In respect of element [2], it stated:

*"Regarding policies, there is a statutory [list of policies](#) for schools [Link]. I will ask the Clerk of Governors for a complete policy list and will forward this to you at our earliest convenience."*

10. On 20 September 2019, the complainant responded in the following terms:

*"Thanks for the link, in here it states that there is statutory policy for '[Redacted]'*

*[3] This is the policy that I am referring to. Please can I be sent this as a matter of urgency.*

*"From the government list you shared there should also be:*

*[4] Behaviour in Schools*

*[5] Behaviour Principles Written statement*

*[6] School exclusion*

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<sup>1</sup> The numbering of the elements has been introduced by the Commissioner to make the analysis that follows easier to understand.

*"So can I also please be sent copies of these as a matter of urgency."*

*"Please note however if [4] is the same as the Behaviour Policy then I require the version prior to the one currently published (from 2016) as the one online commenced February 2019 [Redacted]."*

11. On 24 September 2019, the School responded again. It explained that elements [3] and [6] were recent statutory requirements and therefore such policies not been approved yet. In relation to elements [4] and [5], it stated that:

*"I will ask the Clerk of the Governors to find the related versions and send these to you when possible."*

12. The complainant argued that the School should have held information within the scope of element [3]. She chased a response several times.
13. The School issued a further response on 4 November 2019, in which it stated that:

*"we will no longer be replying to any further correspondence regarding our absence policy of 2018 having already replied on 19<sup>th</sup> and 24<sup>th</sup> September"*

## **Scope of the case**

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14. The complainant first contacted the Commissioner on 21 October 2019 to complain about the way her request for information had been handled. She believed that the School held further information within the scope of her request.
15. At the outset of her investigation, the Commissioner wrote to the complainant to offer her preliminary view of the complaint. The Commissioner noted that the School's explanations as to why it held no further information were reasonable and that there seemed to be little other evidence that further information was held.
16. The complainant did not accept the Commissioner's view and the Commissioner therefore commenced a formal investigation by writing to the School on 13 January 2020, asking it to set out how it had established that it held no further information within the scope of the request.

17. On 16 January 2020, the School called the Commissioner's Office. It stated that it now considered the request was vexatious and wished to know if it was entitled to change its position.
18. The Commissioner informed the School that it is a long-established principle of the FOIA that a public authority is able to change the exemption on which it intends to rely at any point during the lifecycle of a request. However, she noted that the School would be required to justify its use of section 14 and that it would need to issue a fresh refusal notice informing the complainant that her request was now being refused as vexatious. The Commissioner followed up the phone call with a further letter, seeking evidence for and a justification of, the use of section 14.
19. The School issued its revised refusal notice on 16 January 2020.
20. The Commissioner considers that the scope of her investigation is to determine whether the request, when seen in context, was vexatious.

## Reasons for decision

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### Section 14 - Vexatious

21. Section 1(1) of the FOIA states that:

*Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

22. Section 14 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.*

23. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

24. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
25. *Dransfield* 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).
26. The Commissioner has published guidance on dealing with vexatious requests<sup>2</sup>, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
27. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*".
28. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
29. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."
30. Because of the sensitive nature of the issues which form the backdrop to this request and the extent to which those issues are entwined with both parties' submissions (and thus the Commissioner's analysis), the Commissioner has had to redact her Reasons for Decision extensively in

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

the published version of this notice. The full version will only be issued to the complainant and to the School.

*The complainant's view*

31. The complainant pointed to statutory requirements, upon the School, to hold the cited policies and suggested that this demonstrated the serious purpose behind her request – bringing into the public domain information which should already be available.
32. The complainant also argued that the time necessary to comply with her request would have been minimal as the policies should have been readily available and, ideally, published.
33. [Redacted]
34. Whilst noting the other complaints she had submitted, the complainant argued that this particular request was on a separate matter and should therefore have been considered separately. She noted that she was:  
  

*"not trying to re-open an issue, trying to gather information to determine if need to raise a new issue."*
35. [Redacted]
36. [Redacted]
37. In summary, the complainant argued that the information she had requested was information which the School should have had and made easily accessible to the general public. Had it done so, she argued, her request would have been unnecessary. She also felt that the request was distinct from previous issues which she had raised with the School.

*The School's position*

38. The School did not attempt to argue that the request itself would be burdensome to answer. However, it considered that the request had to be considered against the backdrop of its on-going relationship with the complainant. It argued that the request was merely the latest stage in a long-running dispute and that it wished to draw a line and move on.
39. [Redacted]
40. In addition, the School was keen to draw to the Commissioner's attention the fact that, despite having contacted multiple regulators or supervisory bodies, the complainant had not been able to get any of them to agree that there had been serious failings at the School.
41. [Redacted]

42. Finally, the School drew the Commissioner's attention to the volume and frequency of the correspondence which it has received from the complainant. It stated that between 2016 and 2019 it had received a total of 804 emails from the complainant. Many of these had (the School argued) been of considerable length.
43. The School noted that the complainant would often direct her emails to multiple recipients either simultaneously or consecutively, increasing the burden on the School in trying to maintain a consistent approach.
44. The School also informed the Commissioner that the complainant had published derogatory posts on Facebook [Redacted].<sup>3</sup>
45. [Redacted], the School considered that the chances of further value arising out of the dispute had diminished significantly.
46. In summary, the School maintained that it had done its best to try to address the complainant's concerns and queries. However, it argued that the situation had now gone beyond the point where the matters raised served a genuine purpose. The School believed that answering the request would be likely to lead to further rounds of correspondence and more complaints going back over the same ground.

*The Commissioner's view*

47. After careful consideration, the Commissioner has reached the conclusion that the requests, when set in the context of the complainant's broader interactions with the School, were vexatious.
48. As the *Dransfield* judgements point out, a request which appears simple and benign on its face may still be considered to be vexatious when it is considered in its broader context. A public authority is not required to consider every request in isolation.
49. [Redacted]
50. That being said, the Commissioner cannot consider that the sheer volume of correspondence that the School has received from the complainant is proportionate. The School provided the Commissioner with a report showing the volume of emails received by its server which

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<sup>3</sup> The complainant, by contrast argues that she was attempting to bring to attention, what she considered to be breaches of the "Equality and Human Rights Act." [Redacted]. As the Commissioner has not been provided with copies of the offending posts, she takes no view either way and has not had regard to this matter in her considerations.

indicates that, over a four-year period, the complainant has been sending, on average, an email every other day. During 2018, that figure exceeded an email per day. [Redacted], such a volume of correspondence strikes the Commissioner as excessive.

51. The School provided some examples of the correspondence it had received from the complainant which, it stated, demonstrated that the correspondence it received tended to be lengthy as well as frequent. The Commissioner is conscious that these emails (which were admittedly very lengthy), may have been cherry-picked, she has also had regard to the report the School provided. This report shows that most of the complainant's emails in 2016 were between 10-25 kilobytes – which is consistent with a short email. By late 2017, that range had increased to 50-70kb and, from late 2018, the number of emails of size 80kb and larger increased significantly.
52. The Commissioner therefore accepts that the School was required to deal with an excessive volume of correspondence, both in terms of the frequency with which it was received and the work required by each piece.
53. The complainant has claimed that the School tried to frustrate her SARs. The Commissioner looked into these matters separately, but notes that, whilst the School was late in responding on both occasions, she did not find any grounds to investigate further.
54. The School has not attempted to claim that that the complainant's correspondence is aggressive or intimidating – although it did note that her correspondence often contained accusations that the School had not complied with demands or regulations.
55. Having read the examples of correspondence which the School provided, the Commissioner notes that the complainant's emails are often confrontational or defensive. Nevertheless, [Redacted], the Commissioner does not consider that the tone of the emails overall meets unacceptable standards.
56. In the Commissioner's experience, one of the most telling indicators that a request is vexatious is where it becomes clear that the person making the request is attempting to re-visit, re-open and re-litigate matters which have already been addressed. This request bears that hallmark.
57. [Redacted]
58. [Redacted]
59. [Redacted]



60. [Redacted]. Unfortunately, over time, the complainant's motive has drifted. Now the ongoing correspondence has the effect (even if not the intent) of causing a burden to the School which is now out of proportion to any intended benefit.
61. The complainant has made it clear in her correspondence that she does not intend to draw the matter to a close. The Commissioner accepts that, were the School required to answer this request, it would lead to further rounds of correspondence, requests and complaints.
62. [Redacted]
63. Whilst this change in circumstances does not mean that there is no further benefit to the complainant's challenges, it does mean that they are substantially reduced. Whilst the complainant argued that submitting further complaints would ensure that "lessons were learned" [Redacted].
64. [Redacted]
65. [Redacted]
66. In summary, whilst the complainant may, at least originally, have been acting with the best of intentions, the ongoing correspondence has drifted into vexatiousness. The burden on the School is considerable and is likely to distract from its core functions. The case for accepting such a burden (such as it was) has diminished considerably and is not justified.
67. The Commissioner therefore finds that the School was entitled to rely on section 14 of the FOIA to refuse the requests.

#### Section 17 – Refusal Notice

68. Section 17(5) of the FOIA states that:

*A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.*

69. The Commissioner notes that the School did not inform the complainant that it considered her request to be vexatious until four months after the second request was submitted. The School therefore breached section 17(5) of the FOIA in responding to requests.

## Right of appeal

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70. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

71. 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.
72. 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 .....**

**Phillip Angell  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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Cheshire  
SK9 5AF**