

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2021

Public Authority: Office for Standards in Education, Children's Services and Skills

Address: Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant requested information that he believes should have been considered as part of the inspection of a particular school. The Office for Standards in Education, Children's Services and Skills ("Ofsted") refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and therefore Ofsted was entitled to rely on section 14(1) of the FOIA to refuse it.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 3 June 2020, as part of wider correspondence that he was engaged in with Ofsted, the complainant also requested information of the following description:

"All and any information relating to how my concerns were shared with the lead inspector to contribute to their planning of the inspection on 1 May 2018.

"All and any information relating to how Ofsted referenced the safeguarding incident on 27 June 2016 as part of wider evidence in the inspection evidence base following the short inspection of the school on 1 May 2018.

"All and any information relating to the outcome of the local authority investigation referenced in the letter of Emma Ing and dated 18 October 2018."

5. On 30 June 2020, Ofsted responded. It refused the request and relied on section 14(1) of the FOIA (vexatious request) to do so.
6. The complainant requested an internal review on 1 July 2020. Ofsted completed its review on 29 July 2020. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 13 October 2020 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of her investigation is to determine whether or not the request was vexatious.

Background

9. The background to the complainant's request involves an incident ("the Incident") which he says took place when he was employed at a particular school ("the School"). The complainant contends that he was informed by a junior colleague that a "near-miss" incident had occurred when a vehicle, involved in construction work on the school site, had been moving across the playground during school hours and when four pupils were walking across the same playground. The complainant states that he made a formal report of the Incident to the School.
10. The School, for its part, has stopped short of denying the Incident occurred, but has stated that it has no records indicating that it was ever formally reported – either by the complainant or anyone else. Ofsted inspected the School in 2018 and described its safeguarding procedures as "effective."
11. The complainant raised concerns with Ofsted in which he contended that the Incident demonstrated that the School's safeguarding procedures were inadequate. Ofsted informed him that it could not investigate the specific incident but would keep a record of his concerns.

Reasons for decision

Section 14 - Vexatious

12. 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.*

13. 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.

14. 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.

15. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

16. *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).

17. The Commissioner has published guidance on dealing with vexatious requests, 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.

18. 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"*.
19. 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.
20. 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." ¹

The complainant's position

21. The Commissioner invited the complainant to make a submission as to why his request was not vexatious – although she noted that the burden of proof lay with Ofsted. Although he was under no obligation to do so, the complainant did provide a submission setting out why he believed that the information was important.
22. The complainant explained that there were inconsistencies in Ofsted's version of events that he was trying to reconcile. Ofsted had informed him in one letter that his specific concerns had been raised with the Lead Inspector – despite those concerns not having been reported to Ofsted until some five months after the inspection had taken place. In another letter Ofsted had explained how reports such as the one the complainant had raised about the Incident would be considered by the inspectors – but the complainant noted that the inspectors could not have considered the concerns he reported because the School had no records of the Incident.
23. The complainant argued that he was not being unreasonably persistent in pursuing the matter because:

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

"there is no explanation as to how my concerns were referenced in the inspection evidence base as part of the inspection in May 2018. There is no explanation from the inspectorate as to the outcome of the local authority investigation and how the outcome of the investigation was shared with Ofsted."

24. The Commissioner noted that, according to the description of the Incident that the complainant had provided, no child appeared to have been injured and that, given the time that had elapsed since the date of the Incident, it wasn't clear what contemporary relevance or wider public interest the information would have. The complainant responded to that point by saying:

I wrote to Ofsted on 11 September 2018 explaining my concerns in relation to the safeguarding of children at the school when extensive building work was taking place. In the attached email from Ofsted to the local authority, dated 17 September 2018 the email references how Ofsted has no power to investigate the concerns, however the response references 'Ofsted's duty to safeguard children'. The attached response from the local authority to Ofsted, dated 11 October 2018 refers to how the local authority was satisfied with the assurances provided by the project managers for the construction works. The attached email from the senior project manager, dated 09 October 2018 references how 'CDM [Construction Design and Management - Health and Safety] procedures were in place to facilitate the movement of equipment around the site - being restricted to when the children were in class'. I suggest it is unclear how the local authority could have been satisfied with the assurances provided by the project managers when submitting its response to Ofsted of 11 October 2018 given the email from the senior project manager, dated 09 October 2018.

"I respectfully suggest that your definition of minor injuries is unclear. I suggest the impact of the incident was extremely frightening for the children, not least because of their ages. In addition, children and adults were physically exposed to dust and fumes as a consequence of the movement of works vehicles on the playground during school time. A witness account, dated 29 July 2016 states 'There are works vehicles entering and leaving the school to gain access to the building works. These vehicles have to drive across the playground to gain access to the building works and are only meant to enter and leave the school when the children are in class however they have been driving through when the children are out of their classes and in the playground'. Given this account, I suggest it is unclear how the health and well-being of adults and children could not have been affected. Whilst a teacher

at the School, witnessing construction vehicles being moved on the playground when children were on the playground was very distressing. Learning that four children in my class had been involved in a reported near-miss with a moving vehicle on the school playground was devastating. The School's apparent decision not to investigate the matters following my complaint at the investigatory interview on 29 June 2016 is unclear given that my complaint was in relation to the health and safety of pupils and staff. I suggest it is unclear why the School and the local authority would not want to thoroughly investigate the matters raised given that the incidents involved breaches of health and safety...

"...I suggest my request for information is relevant to events today as it relates to the health and safety of staff and the safeguarding of children in a local authority maintained school. Ofsted school inspection procedures stipulate that the inspectorate has a duty to evaluate how the provision is promoting and supporting learners' safety and how the inspectorate has a duty to evaluate safeguarding arrangements over time and not just at the time of the inspection. Given that building work is a feature common to many schools, I suggest my request is relevant to events today and is of wider public value as it relates to the procedures and stipulations put in place to protect the health and safety of adults and children in the School and the responsibility on Ofsted to report on safeguarding arrangements over time as part of the inspection process. "

25. In summary, the complainant argued that:

"I suggest there is nothing which could be described as vexatious, disruptive, not serving a serious purpose or taking on the characteristics of a personal grudge in relation to my information requests to Ofsted."

Ofsted's position

26. By contrast, Ofsted argued that the request, when viewed in the context of its broader interactions with the complainant, was vexatious.
27. Ofsted noted that it had received 26 items of correspondence from the complainant over a two year period, relating to the Incident. It provided a schedule of correspondence showing the frequency with which it had received correspondence. The Commissioner notes that the complainant has also raised concerns via his MP and his trade union.
28. Ofsted referred to another event that had taken place around the same time as the Incident and which had resulted in action being taken

against the complainant. It argued that the complainant was seeking, retrospectively, to establish that the Incident had indeed taken place, in order to justify his subsequent behaviour.

29. Over the course of its interactions with the complainant, Ofsted argued that it had repeatedly informed the complainant that it was unable to address his specific concerns in the manner that he wished them to be addressed. He had refused to accept this position. The complainant had exhausted Ofsted's own internal complaints procedure and complained to the Independent Complaints Adjudication Service for Ofsted (ICASO) – who found that Ofsted had dealt with the complaint properly.
30. In summary, Ofsted contended that:

"In two years of correspondence [the complainant], in pursuit of his objective, has singularly failed to listen to or acknowledge the significant correspondence he has been provided to him [sic?] by numerous officials. He cannot accept that Ofsted has no role to investigate his historic concerns. This is has been a source of vexation, frustration and exhaustion to those involved.

"[We] believe he has categorically demonstrated both unreasonable persistence and the futility of his requests. In addition his behaviour had deteriorated further, to include him making requests with no obvious intent to obtain information. As such, and after being provided with a clear warning about his behaviours, [we] do believe it was proportionate and appropriate to refer to s.14."

The Commissioner's view

31. In the Commissioner's view, the request was vexatious.
32. At first glance, there does appear to be some value to the request. The health and the safety of children (particularly younger children) when they are at school is and should be, very important. Ofsted has a role in ensuring that the various bodies tasked with safeguarding children are performing that role.
33. However, what may have begun as a well-intentioned enquiry has now drifted up to and beyond the point of vexatiousness. The value of the information has been eroded by time and no longer justifies the amount of resources being expended on responding to the complainant.
34. According to the description of the event provided by the complainant, no child was hurt during the Incident – although he has subsequently argued that some of the children may have been frightened by the Incident. The Commissioner can accept that such an event might have been frightening at the time, but the complainant has not put forward

any evidence to suggest that it would have caused any lasting damage and she is sceptical that there would have been significant enduring effects on any of the children involved.

35. The Commissioner is also conscious that the Incident would have taken place over four years prior to the first request being made. The particular construction work seems to have long since concluded. It seems unlikely to the Commissioner that the same construction work would be repeated in the immediate future and therefore any procedures that were in place at the time of the Incident would be of limited relevance even if further construction work were to take place at the School.
36. Nothing that the complainant has provided would indicate that the Incident (even if it happened exactly as he described it) demonstrates any broader safeguarding concerns even in 2016 – let alone at the time the request was made in 2020. The Commissioner therefore cannot see any significant value in the information requested.
37. The amount of correspondence Ofsted has received on this subject is excessive and wholly disproportionate to the seriousness of the matters being discussed.
38. Furthermore, the Commissioner notes, from the documents that she has seen, that the complainant's correspondence is lengthy, with multiple points to be considered. When he is provided with a reply, he responds with an almost line by line rebuttal – few, if any, points are conceded and he continues to rake over old ground: namely the Incident and events surrounding it.
39. It is evident from the correspondence that, even if Ofsted was to respond to the request, little would actually be resolved and it would only serve to prolong the correspondence – correspondence that has gone on for far longer than is justified by the events concerned.
40. It appears to the Commissioner that it is particularly important to the complainant that his account of events in June 2016 be corroborated and vindicated. However, the ongoing dispute between the complainant, the School and Ofsted serves no wider public interest. The persistent use of the FOIA to pursue such a grievance has reached the point where it now constitutes an abuse of the process. The complainant is using FOIA requests as a means to re-visit, re-open and re-argue matters that have been comprehensively dealt with elsewhere.
41. The Commissioner is therefore satisfied that the request was vexatious and therefore Ofsted was entitled to rely on section 14(1) of the FOIA to refuse it.

Right of appeal

42. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

43. 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.
44. 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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