

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2021

Public Authority: Tudor Grange Academies Trust
Address: Dingle Lane
Solihull
West Midlands
B91 3PD

NB. Whilst the full, unredacted version of this decision notice was provided to both parties, the Commissioner's analysis involves extensive discussion of a particular personal matter. The published version of this decision notice has therefore been substantially redacted to remove references to the matter.

Decision (including any steps ordered)

1. The complainant has requested information about careers provision. Tudor Grange Academies Trust ("the Trust") refused the request as vexatious.
2. The Commissioner's decision is that the request was not vexatious and therefore the Trust was not entitled to rely on section 14(1) of the FOIA to refuse it. As the Trust also failed to issue its refusal notice within 20 working days, it breached section 17 of the FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to the request, that does not rely on section 14 of the FOIA.
4. The Trust 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. On 18 December 2020, the complainant requested information of the following description:

"Please could you provide the following:

- 1 A copy of any careers and post-16 transition policies which apply to TGAR and [the School].*
- 2. How many hours of individual careers advice is provided to students per academic year in (a) year 10 and (b) year 11 in the main school at TGAR? Please describe the nature of this advice and the qualifications of the individuals who provide it.*
- 3. How many hours of individual careers advice is provided to students per academic year in (a) year 10 and (b) year 11 in [the School]? Please describe the nature of this advice and the qualifications of the individuals who provide it.*
- 4. How many hours of group careers advice is provided to students per academic year in (a) year 10 and (b) year 11 in the main school at TGAR? Please describe the nature of this advice and the qualifications of the individuals who provide it.*
- 5. How many hours of group careers advice is provided to students per academic year in (a) year 10 and (b) year 11 in [the School]? Please describe the nature of this advice and the qualifications of the individuals who provide it.*
- 6. Please explain whether the answers to questions 2-5 reflect the actual amount of careers advice provided in the 2019/20 academic year and the 2020/21 year to date or whether they are aspirational.*
- 7. Please provide details of any school trips which ordinarily occur in years 10 and 11 which have a specific purpose of post-16 transition and/or careers awareness. Please state the date of the trip, the trip destination, the number of students who participate, the nature of the event and whether any students from [the School] have participated in these trips. If the trips vary from year to year, please provide details for the latest academic year in which they have occurred.*
- 8. Please provide details of any work experience arrangements which are made for students in year 10 and year 11 in the main school at TGAR. Please state: the number of days of work experience provided each year, the proportion of students who participate, the proportion of placements which are arranged directly by TGAR, the proportion of placements which are arranged by a student or parent. Please provide figures in relation to the latest academic year in which work experience occurred.*

9. *Please provide details of any work experience arrangements which are made for students in year 10 and year 11 at [the School]. Please state: the number of days of work experience provided each year, the proportion of students who participate, the proportion of placements which are arranged directly by TGAR, the proportion of placements which are arranged by a student or parent. Please provide figures in relation to the latest academic year in which work experience occurred. If no work experience has occurred at [the School], please share any plans which exist for introducing work experience.*
 10. *Please provide details of any other arrangements made for students (a) in the main school at TGAR and (b) at [the School] which have the specific purpose of assisting post-16 transition or enabling students to become "work-ready" and which are not already detailed above.*
 11. *Please state the number of students in the main school at TGAR who took part in the Duke of Edinburgh's Award scheme in 2019/20 and in 2020/21. If the numbers have been substantially affected by Covid, please provide figures from 2018/19.*
 12. *Please state the number of students who have taken part in the Duke of Edinburgh's Award scheme at [the School] in 2019/20 and in 2020/21. Please describe any arrangements which are made to support [the School] students to take part in this scheme.*
 13. *If no students from [the School] have yet taken part in the Duke of Edinburgh's Award scheme via [the School] or TGAR, please confirm whether they have been invited to do so and provide a copy of any information which was made available to the students or parents in relation to this."*
6. On 12 February 2021, The Trust responded. It refused the request as vexatious.
 7. The complainant requested an internal review on the same day. The Trust sent the outcome of its internal review on 17 March 2021. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 18 March 2021 to complain about the way her request for information had been handled.
9. The Commissioner considers that the scope of her investigation is to determine whether or not the request was vexatious.

Reasons for decision

Section 14(1) – vexatious request

10. 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.*

11. 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.

12. 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.

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

14. *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).

15. The Commissioner has published guidance on dealing with vexatious requests¹, 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.
16. 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"*.
17. 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.
18. 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."*

The Trust's position

19. The Trust explained that the request in question had been submitted against the backdrop of a complaint that the complainant had made about one of the Trust's schools ("the School") in respect of Special Education Needs and Disability (SEND) provision. It noted that the complainant had made allegations of disability discrimination, but that these had not been upheld, despite an appeal to its complaints panel.
20. [Redacted].
21. The Trust identified the following factors as demonstrating that the request was vexatious:

"-the burden on the Trust : as stated there were 3 detailed FOI requests as well as 2 SARs and complaints and accusations, some of which should have been directed to the Local Authority.

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

"- personal grudges: the Complainant was not happy that the School had confirmed that [Redacted] and wanted this decision changed at any cost.

"- unreasonable persistence – the Complainant was advised at different levels of the complaint's procedure that the school had responded appropriately to the Local Authority's consultation, and she should challenge the Local Authority for their decisions as opposed to the school,

"- unfounded accusations – the Complainant was alleging disability discrimination [Redacted],

"-frequent or overlapping requests – 3 very detailed requests involving what appears to be a scattergun approach,

"- no obvious intent to obtain information – some of the information was openly available on the school website, "

"- futile requests – communications and requests continued [Redacted]."

22. The Trust also noted that the complainant was involved with another provider catering for children with particular SEND needs and it considered she might be using the FOIA to gain a commercial advantage.
23. Finally, the Trust suggested that it might be unable to comply with the request without exceeding the cost limit – although it did not attempt to quantify the resources involved – and that it had concerns about the quality of the data it would be able to provide.

The complainant's position

24. The complainant explained to the Commissioner that [Redacted] she had made her requests for information in order to acquire the data she felt she needed to challenge that decision.
25. The complainant noted that she had entered into mediation [Redacted]. The first mediation meeting had taken place the day before her request had been made. At that meeting, representatives from the local education authority had stated that [Redacted] the School was able to offer better opportunities to receive careers advice, physical education training and to participate in the Duke of Edinburgh's award scheme. She therefore considered that her request had a serious purpose in providing evidence against which such a claim could be assessed.

26. The complainant also noted that, at the mediation meeting, it was agreed that all parties would reconvene for a further meeting in January 2021 to allow time for additional information to be gathered. She noted that the outcome of the January meeting was that [Redacted] – but that the matter would be kept under review. She therefore argued that the information will continue to be relevant [Redacted].
27. The complainant disputed that the education provider she was involved with could be considered to be “in competition” with the Trust. She was unhappy that the Trust had questioned her motives for requesting the information and that it had attempted to link its response to the outcome of the mediation. Finally she considered that the Trust had a financial incentive to delay responding to her request.

The Commissioner's view

28. The Commissioner notes that the effect of section 14 is to relieve a public authority of its duty to respond to a request altogether. The Public authority does not have to communicate any information or even determine whether relevant information is held. It therefore follows that the bar for engaging the exemption is one which is high.
29. Having considered the evidence of the parties, the Commissioner does not consider that the Trust has demonstrated that that high bar has been reached.
30. [Redacted].
31. The Trust is entitled to note the inherent link between the complainant's dissatisfaction at the local education authority's decision [Redacted] and the information request. However, having done so, it is also obliged to note that, when the request was submitted, the information sought was directly relevant [Redacted].
32. [Redacted].
33. Whilst the Commissioner recognises that the complainant had submitted two previous information requests, a Subject Access Request (SAR) and had an ongoing complaint at the time of the request, she does not consider that this constitutes an excessive burden.
34. The three information requests (including the present one) and the SAR were submitted over the course of three months (the second SAR was not submitted until after the Trust had responded to the request that is the subject of this notice). Whilst the Commissioner appreciates that this will have diverted resources, she does not consider this number of requests to be excessive. The Trust has not provided any evidence to

suggest that it was dealing with a large volume of correspondence from the complainant outside of these formal routes.

35. The request may, in itself, be burdensome to respond to, but the Trust has not quantified the request in such a way as to demonstrate that it was, on its own, grossly oppressive. It will of course be open to the Trust to rely on section 12 of the FOIA in future, if it has concerns about the burden of work exceeding the FOIA cost limit.
36. The fact that a complaint was ongoing at the time of the request, does not render the request vexatious. The complainant could not have been seeking to reargue a complaint that had not yet been decided and the information was, as the Commissioner has already noted, relevant to the ongoing mediation – which is a separate process. It would therefore have been unreasonable to have expected the complainant to have waited until the complaint had been resolved before submitting her request.
37. In terms of persistence, grudges and futile requests, the Commissioner accepts that some of the complainant's frustration may have been misplaced and that the responsibility [Redacted] ultimately lay with the local education authority. However, there is a clear link between the information the complainant was seeking and the basis on which the local education authority appeared to have made its decision. Therefore the Commissioner does not consider that the complainant was acting unreasonably in making such a request or that the request was motivated by malice.
38. The Commissioner [Redacted] does not consider that the complainant was seeking ways to re-open old grievances – rather, she was attempting to use the appropriate channels to appeal a decision, albeit that she was using several channels simultaneously.
39. The Commissioner has already commented on the frequency of the requests. She does not consider them to be overlapping. Each request deals with a different area of school activities – albeit that there is a central theme [Redacted].
40. The complainant has levelled several accusations of disability discrimination at the Trust. Discrimination (on any grounds) is a very serious matter and accusations should not be tossed around lightly. The Commissioner notes that the allegations were not upheld and she can accept that such allegations would have caused a level of distress to staff at the Trust. However, she does not consider this sufficient to render the request vexatious and notes that the Trust has not demonstrated evidence indicates that that the accusations were levelled

at the Trust as a corporate body, rather than at individual members of staff.

41. The Trust has raised concerns about the complainant's position as a potential competitor. The Commissioner considers that, if the Trust has genuine concerns about the commercial sensitivity of the information it is being asked to provide, it is entitled to rely on section 43 of the FOIA to withhold that information.
42. In summary, the Commissioner is satisfied that there was a serious purpose behind the request and that the Trust has not demonstrated that the request, in the context of its broader interactions with the complainant, would have caused a disproportionate burden. She therefore finds that the Trust was not entitled to rely on section 14 of the FOIA to refuse the request.

Procedural Matters

43. 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.

44. The complainant has argued that the Trust delayed her request deliberately in order to ensure that she did not have the requested information prior to her second mediation meeting and that it would have had a financial incentive to do so.
45. The Commissioner considers that this is a very serious allegation and that the complainant has put forward no proof to demonstrate that the response was delayed deliberately. She also notes that, because of the Christmas holidays that would have begun not long after the request was submitted, the statutory deadline for responding would have fallen after the date on which the meeting was due to take place.
46. Nevertheless, even accounting for that delay, the Trust still failed to respond to the request in time. The Commissioner therefore finds that the Trust breached section 17(5) of the FOIA in responding to the request.

Right of appeal

47. 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

48. 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.
49. 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

Roger Cawthorne
Senior Case Officer
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Water Lane
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SK9 5AF