

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 July 2024

**Public Authority:** London Borough of Hackney  
**Address:** Town Hall  
Mare Street  
London  
E8 1EA

#### **Decision (including any steps ordered)**

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1. The complainant requested meta-data relating to the handling of one of their previous requests. The London Borough of Hackney ("the Council") initially relied on section 42 (legal professional privilege) to withhold information within scope of the request, however during the course of the Commissioner's investigation amended its position to rely on 14(1) of FOIA (vexatious) to refuse the request.
2. The Commissioner's decision is that the request was not vexatious and therefore the Council was not entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not rely on section 14(1) of FOIA.
4. The Council must take this step within 30 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.

## Background

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5. On 14 May 2023 the complainant made a request for copies of the deeds of a building operating as a primary school, and "all subsequent documentation, including anything that relates to the transfer of the building (bequest documents?) to the LCC in 1905 including any conditions thereon, and documentation of subsequent responsibilities / ownership as passed onto the Borough of Hackney (date currently unknown) – and the terms of that stewardship / ownership".
6. In its response (ref: 16591453) dated 19 May 2023, the Council referred the complainant to the Land Registry and stated that it could not locate a transfer document dated 1905. The Council did not provide information within scope of the complainant's request.
7. On 11 July 2023 the complainant asked the Council to detail the areas of business that it had checked in order to determine that it did not hold information within scope of their request.
8. On 13 July 2023 the complainant wrote to the Council to provide it with a copy of a receipt dated 1990 for the transfer of "various old deeds and documents" relating to the primary school, from the Inner London Education Authority ("ILEA"), via the London Residuary Body, to the London Borough of Hackney.
9. On 17 July 2024 the Council wrote to the complainant stating "our Legal Department has advised that it has nothing further to add to our original response".

## Request and response

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10. On 8 November 2023, the complainant wrote to the public authority and requested information in the following terms:

"I would like to request all communications relating to any and all inquiries made in response to my FOI request for the historic deeds (including the 1906 deeds) for the school buildings now operating as Colvestone Primary School, Colvestone Crescent, E8 2LG (FOI request: 16591453).

These should include:

- [1] all correspondence related to the FOI request, detailing who was consulted about or asked to look for the deeds, in which department(s)

within or external to Hackney Council they work(ed), and the exact nature of those requests, responses received and any follow up correspondence

- [2] the dates of all correspondence from initial enquiries onwards

- [3] what searches were done for the historic deeds, detailing whether they were catalogue searches or physical searches, 2 including which archives or document storages / collections were searched (and for how long), and what specific terms or details were used to make and guide those searches

- [4] all internal (and external) correspondence, details of searches etc. (as above), related to this matter made subsequent to the modification of the original request (made by email on the 13th July 2023) when the Information Team were sent documentation of the transfer of the deeds (with relevant cataloguing details) to Hackney Council from the ILEA by the London Residuary Body in 1990, including all information received and correspondences entered into

- [5] all correspondence with the Hackney Council Legal Department in relation to this FOI request, including initial and all subsequent correspondence and all advice received”

11. The public authority responded on 24 November 2023. It stated that it held information within the scope of the complainant’s request however it was exempt from disclosure under section 42 of FOIA.
12. On 1 December 2023 the complainant requested an internal review. As of the date of this notice, the Council has not provided the complainant with an internal review outcome.
13. On 28 February 2024 the complainant contacted the Commissioner to complain about the Council’s handling of their request.
14. During the course of the Commissioner’s investigation the Council sought to rely on section 14(1) to refuse the complainant’s request in its entirety.

## **Reasons for decision**

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### **Section 14(1) – vexatious requests**

15. The following analysis considers whether the request was vexatious.
16. 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.

17. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
18. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
19. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
20. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
21. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
22. The four broad themes considered by the UT in Dransfield were:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

23. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

### **The Council's view**

24. In a letter to the Commissioner the Council set out its basis for relying on section 14(1) to refuse the complainant's request, with reference to three of the four broad themes outlined in Dransfield as referred to at paragraph 22 above; motive, burden and value or serious purpose.

### **Motive**

25. The Council takes the position that the complainant's "numerous requests are overlapping, repetitive and confusing". It has provided the Commissioner with an annex of five requests submitted by the complainant over a nine month period, which include two requests relating to the deeds, the meta-request central to this notice, a request for information about leaflets printed and circulated ahead of the public consultation, and a request for information about school postcodes and pupil allocations.
26. The Council stated that it understood the complainant's motive for making their request stemmed from their position that the Council may be in breach of a restriction placed on the Council at the time of conveyance of the Colverstone Primary School to the London Corporation, and by extension the London Borough of Hackney, in 1905. The Council stated that it was not aware of any restriction and considered that it was in compliance with any and all applicable requirements in relation to managing its estate. The Council emphasised its position that the complainant's assertion that the Council is in breach of any restrictions is unproved.
27. The Council recognised that a recent decision to close and merge a number of schools in the Borough had created upset in the Borough and that this had formed the motivation behind the complainant's multiple requests on the matter. However, the Council was of the opinion that the complainant had drifted from the original reason for seeking the information, to the extent that the request forming the basis of this notice held no value in meeting their original aim in understanding the reasons behind and impact of closing Colverstone Primary School.

28. The Council also stated that it had informed the complainant, in its responses to their prior information requests, that it does not hold the historical deeds for the property. The Council explained that it presumed the requester believes that no conveyance can be made without the deeds, however the Council states this understanding is incorrect. According to the Council's submissions, "the Land Registry remains the definitive record of land and property ownership in the United Kingdom and the requested is aware that they may make an application (for a small fee) for information held by them in relation to the property in question. The Council therefore considers that the requester's motive will not be satisfied by responding to the request as the deeds are not as crucial as the requester considers them to be".

### **Burden**

29. The Council argued that the request posed a significant burden on its resources. Giving part [4] of the request as an example, the Council stated that to comply would involve searching records held digitally and physically from "24 years ago"<sup>3</sup>, which is when the requested deeds are believed to have been transferred to the London Borough of Hackney. The extensive nature of the searches required due to the passage of time would detract officers from their core duties and would be disproportionate use of resources when balanced against the value of the request.

30. The Council explained that to conduct digital searches would involve the restoration of email inboxes, which is an overnight process requiring officer intervention. Additionally, the Council stated that it would have no way of knowing which officers or mailboxes were involved over such an extended period of time, and it would be unable to complete a broad keyword search without restoring all mailboxes of all former officers, which the Council maintained would be an unreasonable effort.

31. The Council added further:

"Additionally, [name redacted]'s request for 'all information received and all correspondences [sic] entered into' in relation to

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<sup>3</sup> Per a copy of the receipt for the deeds provided to the Commissioner by the complainant, which have been date stamped 1990 by the London Borough of Hackney, the Commissioner infers that the Council in fact means that it would be required to search for information relating to an event that occurred 34 years ago.

[4] is plainly excessive when considering an event - the transfer of trivial information - 24 years ago. The Council suggests this is trivial in light of its earlier note that the Land Registry remains the primary authority on land and property ownership - the Council's records are therefore irrelevant. The burden to identify all written and electronic data held in relation to the matter is disproportionate to the value of the request, which the Council considers to be minor."

32. The Council also stated that it considered the request to be an improper use of FOIA, and that while a meta-request such as that forming the basis of this notice is not in itself vexatious, it is not the correct route for challenging aspects of a conveyance. The Council stated that any issues relating to the deeds that may arise from the conveyancing process will be appropriately checked by the necessary qualified individuals, and that it is not the complainant's role or responsibility to quality assure this process.

## Value

33. The Council appreciated the closing of schools that have been in the community for over 100 years had caused disquiet within the local community, and stated that it had received a number of information requests on the subject from other residents. However the request forming the basis of this notice differed from those it had previously received in that it holds no material value to either the complainant or the wider public:

"[name redacted]'s request concerns searches and correspondence in relation to a document (the deed) that - as the Council has outlined - is irrelevant. The Council therefore considers that the request has no value - especially as the request has deviated from his original request to see the deeds themselves...

The Council does not believe that correspondence from 24 years ago, details of searches, correspondence in relation to a previous request or dates of such correspondence would serve any purpose in light of the fact that the deeds are inconsequential to the closing of the school and the Council's future plans for the site."

34. The Council added that the public consultation and wider work of the Council in respect of its schools estate strategy has suitably involved the public in the decision to close the school at the end of July 2024, and responding to the complainant's request would not "undo a decision in respect of a local school that they may be unhappy with."

35. Finally, the Council stated that it considered that were section 14(1) not engaged, then section 12 (cost limits) would be, in terms of the breadth of the request and the amount of resources required to satisfy it.

### **The complainant's view**

36. In an email to the Commissioner, the complainant stated that clear reasons for making their information request were established in April 2023 and noted that the Council had not sought to challenge them until the Commissioner's intervention.
37. The complainant also disagreed that their request presented an unreasonable burden on Council resources. They argued that in their earlier request they had gone to great lengths to identify where within the Council the historical deeds were likely to have been kept and had asked the Council to confirm that it had searched those locations, however the Council declined to do so, therefore precipitating the complainant's meta-request for a more detailed breakdown.

### **The Commissioner's decision**

38. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
39. The Commissioner feels it necessary to make clear that the matter under consideration does not strictly relate to the information sought by the complainant's request of 14 April 2023, rather it is the complainant trying to understand what measures the Council has taken to try and locate the information requested.
40. Firstly, the Commissioner notes that the information request at the centre of the meta-request forming the basis of this notice was the first information request that they submitted to the Council for a copy of the deeds, on 14 April 2023. Per the information provided by the Council in its submissions, the meta-request was the fourth request that the complainant had made relating to the deeds in an eight month period. Having reviewed subsequent correspondence between the complainant and the Council in relation this information request, the Commissioner notes that, on receipt of the Council's initial response, the complainant asked the Council to detail the searches undertaken when responding to their request, which the Council appears to have roundly ignored. Indeed, on 17 July 2023 the Council acknowledged the complainant's



correspondence on the matter but advised that its legal department had nothing further to add. With this in mind, the Commissioner considers that the complainant's request of 8 November 2023 is clear, unambiguous and motivated by a desire to understand the searches and enquiries undertaken by the Council when responding to their first information request, as the information provided in its response did not satisfy the scope of their request.

41. The Commissioner does recognise the broader context, as illustrated at paragraphs 26 and 27 above, and understands that the concern around school closures will have informed the complainant's meta-request. However he disagrees with the Council's assertion that, on making the meta-request, the complainant had drifted from the original reason for seeking the information described in their original request of 14 April 2023, as at the time the request was made the complainant was seeking the information in order to inform their participation in a public consultation.
42. The Commissioner is not entirely satisfied that responding to the complainant's request would be disproportionately burdensome to the extent that section 14(1) is engaged.
43. Regarding points [1], [2], [3] and [5] of the complainant's request, the Council would be required to provide any information it holds about searches conducted and correspondence sent and received between the 14 April 2023, when the information request was received, and 19 May 2023, when it provided its response, as that is the scope of the request.
44. Furthermore, the Commissioner is not convinced that the Council has interpreted part [4] of the complainant's request correctly. Part [4] reads:

“[4] all internal (and external) correspondence, details of searches etc. (as above), related to this matter made subsequent to the modification of the original request (made by email on the 13th July 2023) when the Information Team were sent documentation of the transfer of the deeds (with relevant cataloguing details) to Hackney Council from the ILEA by the London Residuary Body in 1990, including all information received and correspondences entered into –”
45. Per the Council's understanding, to comply with this request would involve the reinstatement of all suspended email accounts for former Council staff, and a Council-wide search for historical written and electronic data. However, this would be a disproportionate effort in

relation to the substance of the meta-request, which is for information the Council holds about searches conducted and correspondence sent and received, after the complainant had modified their original request to include provision of a document they believe to be pertinent to any searches conducted by the Council. Part [4] of the request, by the Commissioner's understanding, does not require the Council to perform searches for historical information again, but to describe the searches it performed when it received further evidence from the complainant in their email of 13 July 2023.

46. From reviewing the Council's email dated 17 July 2023, referred to at paragraph 10 above, it appears – at least on the surface - that it did not undertake any further searches for information within scope of the complainant's modified request of 13 July 2023, therefore the Commissioner is unable to accept that responding to part [4] of the request would be as burdensome the Council describes.
47. Crucially, the Council has not provided the Commissioner with any details of which officers or areas of the business it would be required to engage with in order to respond to the request, nor has it provided him with any sampling exercise or estimate to demonstrate that fulfilling the request would be grossly oppressive.
48. The Commissioner has considered the value of the request relative to the time it was made, and the value that it holds at the time of writing this notice.
49. At the time it was made the complainant was seeking the information to inform their participation in a public consultation on the closing of the school site. The Commissioner therefore considers that the request held value to the complainant, as the intended use of the information sought was to facilitate involvement in a democratic process, and to the wider public in assuring requesters that the Council was meeting its obligations under FOIA, particularly when handling requests relating to a contentious decision. The Commissioner acknowledges that that Council may take the position that it has already satisfied the public interest in its compliance with FOIA, as it provided the complainant with a timely response to their request, but he considers it necessary to point out that it failed to deliver an internal review and amended its position in respect of the request after the Commissioner's intervention.
50. As of the date of this notice, the Council has concluded its consultation and has passed the decision to close the school site, therefore processing of the request is unlikely to assist the complainant further in respect of any action they intend to take

against the closure. The Commissioner therefore recognises that the value of the request has been diminished due to the passage of time, but would argue that this is due to the delays the complainant has faced in having their request - and subsequent complaint about their handling of their request - addressed by the Council and Commissioner. That being said, the role of the Commissioner is to evaluate the handling of a request within the context of when it was made and he has therefore considered value of the complainant's request of 8 November 2023 relative to the circumstances at the time.

51. The Commissioner believes the Council was not entitled to rely on section 14(1) of FOIA to refuse the request because it was not vexatious.
52. The Council must now issue a fresh response to the request.

## Right of appeal

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

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

54. 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.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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