

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 December 2011

**Public Authority:** King's College Cambridge  
**Address:** Cambridge  
CB2 1ST

#### Decision (including any steps ordered)

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1. The complainant made a number of requests to King's College Cambridge (the "College"). The College refused to deal with these requests, stating that the requests were vexatious and repeated (section 14(1) and (2)).
2. The Commissioner's decision is that the College was correct to rely upon section 14(1) in refusing to deal with the requests.
3. Therefore the Commissioner does not require the College to take any additional steps.

#### Request and response

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4. The complainant has made a number of requests for information to the College prior to the requests in question in this case. The requests that are the focus of this case were generated following the receipt of a response from the College in relation to several earlier requests (dated 13, 20, 24 and 28 November 2009, and 6 December 2009) – which were subject to an earlier decision notice issued by the Commissioner under case reference FS50285876. This background information is included in order to put the requests in question in this case into context. The requests in question (quoted below) contain references to the earlier requests made by the complainant – these references are marked in bold in order to differentiate them from the requests in question in this case. The Commissioner has also included in the quotation the numbering system employed by the College in its internal review. These

numbers are included in square brackets shown in the quoted text below.

5. On 20 November 2010, the complainant wrote to the College and made the following requests:

***“Request dated 13 November 2009:***

***(iii) all other correspondence with DCSF relating to the DCSF inspection***

*...May I have [1] the other documents between the school and DCSF/ISI setting up and notifying the school of the subsequent ISI inspections in 2010 and [2] any follow up letters or emails or any other form of communication from/to DCSF/ISI setting out the findings of the two inspections in 2010? Were letters sent to the DCSF/ISI accompanying the Action Plan? [3] If so, may I see them?*

[...]

***(v) details of who drafted the Provost's letter dated 6 November 2009 and the advice given on the drafting of such letter***

*...[4] Please let me know which firm of solicitors was involved and which governors? Your answer gives the impression that the headmaster and senior management were not involved in the drafting of the Provost's letter and did not see any draft versions of the final letter. [5] Would you please confirm this?*

*...[6] What did these individuals [i.e. the headmaster and the school bursar] do with this information and [7] how is it that, given the advance knowledge of DCSF/ISI involvement, the school was taken completely by surprise when the ISI inspectors turned up unannounced?*

***(vi) the headmaster's manuscript notes of the meeting with inspectors on 18 September 2009***

*...please let me have [8] the meeting notes of the school bursar and [named individual] and [9] the recollection of the headmaster as well as [10] copies of all emails and letters sent by any of the attendees in connection with the ISI end of day briefing meeting on 18 September 2009.*

***(vii) all correspondence and emails (along with supporting papers) between the headmaster, senior management and***

***staff on the matter of the DCSF inspection, including minutes of each and every meeting held to discuss the matter.***

*...I am aware of other documents sent to members of staff at the time of the unannounced inspection and thereafter and [11] may I have the email sent by the headmaster to the school bursar on or around 21 September 2009?*

*...[12] Would you please let me have the minutes of all meetings of senior management from May 2008 until present date regardless of whether the meetings related to the DCSF inspection or not.*

***(viii) all correspondence and emails (along with supporting papers) with any Governor on the matter of the DCSF inspection, including minutes of each and every meeting held to discuss this matter.***

*...In connection with the DCSF inspection and the subsequent press comment in December 2010 and January 2010, [14] please let me have the dates of any meetings and/or telephone calls (between 19 September 2009 and present date) at which one or more governor was present, even if such meeting was informal or private. [15] Please provide notes and minutes of such meetings/telephone calls and all emails between governors.*

***(ix) detailed minutes (along with supporting papers) of all King's School Governor's meetings since May 2008, including minutes of any sub-committee (including the Legal sub-committee).***

*Thank you for supplying these documents. I note you have redacted certain sections of these documents and you seem to have left out certain documents. I note that the following documents are missing:*

*Governors' minutes of [16] 19 November 2009, [17] 10 February 2010 and [18] 17 June 2010 plus [19] any others before or after this date...*

*Education Committee minutes after 22 October 2009. [22] No minutes have been disclosed for 2010...*

*...[26] May I see the minutes for meetings [of the Governor's Estates and Finance Committee] which took place after 2 November 2009?*

*...I also note that there are no minutes [of the Governor's Legal, Administrative and General Purpose Sub-Committee] between June*

2009 and October 2009. **[29]** Would you please confirm this? The last date for which you have supplied minutes was 20 October 2009. **[30]** Did meetings take place after this date and if so may I see the minutes?

**(x) summary of the work that the Provost mentions in his letter of 6 November 2009 that has already been carried out by the headmaster, bursar and legal sub-committee in conjunction with the school lawyers**

...**[32]** Why did the Provost say in his letter that the unannounced inspection took place 'before the legal sub-committee had time to complete its work'? In the light of the Provost's comments, **[33]** were there any meetings of this committee between June 2009 and October 2009...?

**(xiii) copies of any correspondence (including emails and supporting papers) between the senior management of King's and the Governors in response to [the complainant's] letters to the Chairman of Governors (on 19 April and 23 October), Kester Cunningham John (25 March 2009) and [the Chair of the Review Panel] (22 February 2009) in which they repeatedly refer to the systematic failure in procedures (including regulatory failures)**

...**[34]** Please also let me know what actions were taken by the respective recipients of the correspondence?

**(xv) copy of the most recent School information and Self-Evaluation Form (SIEF)**

...**[35]** Would you please also let me have the current SIEF?

**Request dated 20 November 2009:**

**Would you please also confirm the name of the Proprietor of King's College School?**

...**[38]** Who was the DCSF letter sent to once it was received by the School as it appears that the documents were not seen by the Proprietor?

**Request dated 28 November 2009:**

**(a) Immediately following the Review Panel hearing on 8 December 2008, I gave [the Chair of the Review Panel] a copy of a letter dated 5<sup>th</sup> December 2008 from a Woodroffes (solicitors). A copy of this letter was also given to the**

***Provost some months later. This letter summarised the findings of an internal investigation carried out [named School] by its own solicitors and was very revealing in its findings. [The Chair of the Review Panel] indicated to me that he would look into the matter. The FOI request is for copies of all minutes, discussion notes, notes of telephone calls and other written material that shows how the school, [the Chair of the Review Panel], the Provost and the other governors considered the additional material contained in the Woodroofes letter dated 5 December 2008 and the actions that were taken as a consequence.***

*...Given that [the Chair of the Review Panel] gave his personal assurance (at the end of the Review Panel hearing) that he would look into this matter, [39] could you confirm whether he did or did not look into this matter and [40] what form did any enquiry or investigation take? [41] The same question applies to the Provost who, having received the same letter, ought to have been very concerned by the contents of the Woodroofes letter.*

***(b) Confirmation (with date) that a professional reference [regarding a named teacher] was eventually provided by the Principal of [named school].***

*Your answer states that 'neither the School nor the College have a record of this'. [42] Did the Principal of [named school] actually provide a professional reference on [named teacher] and had the record been mislaid or disposed of, or was no such reference provided?*

*...[43] What actions did the headmaster or any of the governors make (after he/they had been put on notice that the reference on [named teacher] was unreliable) to satisfy himself/themselves that [named teacher] was a suitably qualified and honest person, that the circumstances surrounding [his/her] departure from [named school] were explained to his/their satisfaction and that what [named teacher] told him/them was true and accurate in all material respects and consistent with [his/her] application for employment.*

***Request dated 6 December 2009:***

***(a) details of each and every ISI course or workshop attended by the headmaster, Senior Management of King's College School, and any of its governors during the 12 months to September 2009.***

**[44]** *Please let me know which other training courses were attended by the headmaster, senior management and governors during this period.*

**(b) the date of appointment of Veale Wasborough as new educational solicitors to King's College School**

*...[45] Could you explain why Veale Wasborough's name does not appear on the introductory pages of the audited accounts of King's College? I note that Mills & Reeve and Kester Cunningham John's names appear in this introductory section."*

The requests marked with numbered square brackets are the focus of this case. Because of the nature of this case, some of the College's responses have not been complained about by the complainant, or are under consideration by the Commissioner in relation to another case (FS50374489). Therefore, the Commissioner has only quoted the parts of the complainant's requests that are relevant for this case.

6. The College responded to the complainant on 10 January 2011. It stated that it believed that all these requests were vexatious and/or repeated, and as such sections 14(1) and (2) of FOIA applied.
7. The complainant requested an internal review on 11 January 2011.
8. Following an internal review, the College wrote to the complainant on 30 March 2011. It stated that it had now decided that some of the requests were not vexatious or repeated (requests [8], [11], [35] and [44]). However, in relation to the remaining requests it upheld its use of sections 14(1) and (2).

### **Scope of the case**

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9. The complainant has contacted the Commissioner to complain about the way that certain of his requests for information had been handled.
10. During the investigation the Commissioner clarified with the complainant which elements of his requests would be considered in this case.
11. Bearing this clarification in mind, the scope of this case has been to consider the College's use of sections 14(1) and 14(2) to refuse requests [4] to [7], [12], [14] to [19], [22], [26], [29], [30], [34], and [39] to [43].

## Background

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12. The requests in question contain references to King's College School Cambridge (the "School"). For the reasons set out in the decision notices for FS50285876 and FS50318306, the School is part of the College for the purposes of FOIA.

## Reasons for decision

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### Exemption for vexatious requests

13. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if that request is vexatious.
14. In this case the College applied both sections 14(1) and 14(2) (exemption for repeated requests) in its correspondence with the complainant. However, in its response to the Commissioner's letter asking for its submissions it only provided arguments in relation to section 14(1). Given this, and given the nature of these arguments, the Commissioner has proceeded on the basis that the College is applying section 14(1) to all of the requests in question in this case.
15. The Commissioner considers that the following five factors should be taken into account when considering whether a request can be characterised as vexatious.<sup>1</sup> These are:
- Whether compliance would create a significant burden in terms of expense and distraction.
  - Whether the request is designed to cause disruption or annoyance.
  - Whether the request has the effect of harassing the public authority or its staff.
  - Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
  - Whether the request has any serious purpose or value.

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Practical\\_application/VEXATIOUS\\_REQUESTS\\_A\\_SHORT\\_GUIDE.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Practical_application/VEXATIOUS_REQUESTS_A_SHORT_GUIDE.ashx)

16. During the investigation the Commissioner wrote to the College asking it to consider these factors and how they applied in this case. In making his decision the Commissioner has considered the College's submissions, as well as those of the requestor. Whilst the issue here is whether the request, rather than the requestor, is vexatious, the wider context of the dealings between the College and the complainant may be relevant where these suggest that the pattern of the contact between the complainant and the public authority means that these requests can be fairly characterised as vexatious.

*Would the requests impose a significant burden in terms of expense and distraction?*

17. The Commissioner considers that determining whether a request has a significant burden involves more than just the cost of compliance. A public authority should also consider whether responding would divert or distract its staff from their usual work.
18. The College has argued that it has already spent a lot of time dealing with requests from the complainant, and has provided evidence to support this statement. It has stated that between 13 November 2009 and 29 November 2010 its staff had spent 41.5 hours dealing with requests from the complainant. In the same period, its staff had only spent 12.5 hours dealing with requests from individuals other than the complainant.
19. If the concern of the College related only to the time that would be taken in complying with the complainant's requests it would have been more appropriate for it to cite section 12(1) of the FOIA, and refuse the requests on the grounds of costs. However, the Commissioner accepts that these are relevant factors where the concern of the public authority is about the burden of the requests both in terms of cost and of diverting staff away from the core functions of the public authority.
20. In particular, the Commissioner considers that a relatively simple request may still be deemed to impose a significant burden because if it can be shown that any response will be very likely to lead to a significant number of further requests and complaints. The wider context of the request – and in particular any pattern of earlier requests – will be particularly relevant in establishing this.
21. Therefore in considering the College's arguments the Commissioner has taken into account the context of the requests that are the focus of this case. In particular he notes that in the six weeks prior to the requests in question being made, the complainant made the following additional requests to the College:



- 22 October 2010 – an email containing 3 new requests.
  - 5 November 2010 – an email containing 17 new requests.
  - 29 November 2010 – an email containing 28 new requests.
22. In addition to this, although he is only considering 22 requests in this case, the Commissioner notes that these were contained in a letter which contained 45 new requests to the College.
23. The Commissioner has gone on to consider whether there is any pattern whereby whenever the College responded to a request, this would be highly likely to generate further correspondence and further requests from the complainant. As noted above, this case can be placed in the context of the complainant having made a large number of requests to the College since 2009. Having been provided with a copy of these requests, the Commissioner considers that it is fair to say that many of them were made following the receipt of a response to a previous request – some are in fact embedded within requests for internal reviews. For example, the requests in question in this case were made by the complainant shortly after receiving a response to several other requests (in a letter from the College dated 24 November 2011), and were intermingled with requests for internal reviews of some of the College's responses to previous requests.
24. In reaching a view on this, the Commissioner has also considered the complainant's statement when he requested an internal review that,
- "I have no wish to inconvenience the College or the School, just a desire to get to the bottom of the failings, incompetence and prejudice of certain senior managers at the school and the cover up that some of the school governors were involved in. I have no time pressures and will continue to press for answers even if this means having to make formal complaints to the ICO."*
25. He has also noted another statement by the complainant, when clarifying his request for an internal review, that,
- "...for as long as the responses I receive have the manner of stonewalling, I should advise you that I will continue to ask for internal reviews and if after that I am still not happy with the responses, I will continue to make formal complaints to the ICO."*
26. Bearing these points in mind, the Commissioner considers that these requests are part of a pattern whereby any response from the College would be highly likely to generate further correspondence and further requests from the complainant.

27. The Commissioner considers that this is an important factor to take into account when considering whether responding to a request would be costly and burdensome.<sup>2</sup>
28. Additionally, the College has referred the Commissioner to the nature of the complainant's requests, and in particular the repetitive nature of many of them. Given the way in which the requests are written, where many either repeat or overlap earlier requests, the College has argued that this has compounded the burden on its staff dealing with these requests,

*"Each time we received a new request our first thought was 'haven't we answered this already?' and we thus had to look through the previous correspondence. Thus each new request took about half as long again to answer as the previous request. The cumulative effect of simply controlling and administering the resultant files of (electronic) paperwork was inevitably an additional burden."*

29. Thus, it has argued, the burden of dealing with the complainant's requests has been extremely burdensome on its staff, and would continue to be so if it were to respond to the requests that form the basis of this case. It has informed the Commissioner that it has only two employees who handle FOIA requests to the College, alongside their other duties. Prior to the series of requests being made by the complainant, these staff members had been able to handle their FOIA duties alongside their other duties with little difficulty. However, since then many of their other duties have had to be given lower prioritisation for months at a time, in order to meet deadlines to respond to the complainant's requests. It has described dealing with these requests as a significant extra burden in terms of time and distraction, and that this has been disruptive and dispiriting for its employees, diverting them away from their core functions.
30. Taking these factors into account, the Commissioner is satisfied that the context and history of the request and the submission of numerous requests to the College in a short time period, render the requests in question in this case burdensome in terms of expense. Therefore he is satisfied, from the evidence supplied by the College, that the provision of a response to these requests would involve a burden both in terms of expense and on the impact on staff time.

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<sup>2</sup> *Betts v the Information Commissioner* [EA/2007/0109]

*Were the requests designed to cause disruption or annoyance?*

31. The College has referred the Commissioner to articles in the media, anonymous letters sent to other schools and organisations in the region, and changes made by persons unknown to the Wikipedia entry for the School. However, without any evidence linking these to the complainant the Commissioner has not taken these into account. Therefore he has not given any weight to this factor.

*Would the requests have the effect of harassing the public authority or its staff?*

32. In reaching a view on this factor the focus should be on the likely effect of the request (seen in context), not on the requestors intentions. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing. Relevant factors to take into account will include the volume and frequency of correspondence, the use of hostile or abusive language, or mingling requests with accusations and complaints.
33. The College has argued that these requests would have the effect of harassing its staff and in particular the employees dealing with the requests. It has referred the Commissioner to the following factors that it has taken into account when coming to this view:
- the volume and frequency of requests that have been made, and in particular, the fact that many requests have been made within a short period of each other (see paragraphs 18 and 22 above);
  - linked to this, the nature of the requests which are at times repetitive and/or overlap with earlier requests;
  - the behaviour of the complainant which, in the College's view, has been obsessive;
  - in one instance, the complainant emailed the College to remind it that a response to a request was due the next day, and asked it to confirm that it would be responding to his request within the time limit; and
  - the use of accusatory, sarcastic and bullying language.
34. The College has argued that the complainant's behaviour has already had a harassing effect on several of its employees, and that responding to these requests would only compound those effects. In particular, it has provided arguments as to the direct harassing effect handling these requests has had on one of its staff dealing with the FOIA. Whilst, given the personal nature of these arguments the Commissioner has not

detailed them in this notice, he is satisfied that these show that these requests have had a harassing effect on this member of staff.

35. The Commissioner is not convinced that there is any hostile, abusive or offensive language in this case. Nor does he consider that in relation to the requests in question in this case, that there is a mingling of accusations and complaints.
36. However, the Commissioner notes the number of requests made by the complainant, and in particular the number of these that have been made in a relatively short time period. He also notes his conclusions that there is a pattern that any response from the College to a request would be highly likely to generate further correspondence and further requests from the complainant. In addition to this, he does accept that some of these other requests contained language that could have been interpreted as accusatory. Bearing in mind these factors, the Commissioner is satisfied that dealing with these requests could have had a harassing effect on those members of the College's staff who were tasked with dealing with them.
37. The nature of the College's arguments illustrate the close links between this factor and the question as to whether the requests can be fairly characterised as obsessive or manifestly unreasonable. The Commissioner has gone on to consider this factor.

*Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?*

38. After considering the College's submissions, the Commissioner considers that it has argued that these requests should be regarded as obsessive as:
  - the volume and frequency of the correspondence strongly indicate that the requests are obsessive;
  - the overlapping, somewhat repetitive, nature of these requests exacerbates the burden of these requests;
  - the complainant nearly always responds to its emails within 24 hours, and usually within a few minutes; and
  - in its view the complainant is obsessed with his own viewpoint, to the exclusion of any other.
39. In addition to this, the College has also argued that the complainant has continued a three year campaign against particular employees. In particular, this campaign has focused on a particular teacher at the

School, and various personnel at the College and the School who were involved in dealing with those concerns and subsequent events.

40. The Commissioner again notes the regularity and number of requests made by the complainant to the College. He also notes that most of these requests are on a theme and are focussed on the concerns the complainant had about a particular teacher, and the subsequent events following the raising of these concerns. After reading through the details of these requests, the Commissioner is satisfied that they are all linked in some way.
41. In the Commissioner's view, the number and continual flow of requests on a linked theme demonstrates behaviour of an obsessive nature.
42. The Commissioner is mindful of his conclusions that there is evidence that these requests are part of a pattern, whereby every time that it responded to a request, this would be highly likely to generate further correspondence and additional requests from the complainant.
43. Taking these points into account, the Commissioner is satisfied that the complainant's general approach can be fairly seen as obsessive. As such, he considers that these requests have an obsessive quality. The Commissioner therefore accepts that a reasonable public authority would find these requests, in this context, obsessive.

*Do these requests have value and/or a serious purpose?*

44. The College has argued that these requests lack value or serious purpose as the complainant's main purpose is not to obtain information, but is instead to pursue his grievances against the College and the School, and some of its employees.
45. The complainant has argued that his requests have arisen as a result of an unannounced emergency inspection by the Independent Schools Inspectorate (the "ISI"), which resulted in several criticisms of the School, and the actions of the College and the School in informing the parents of the results of this inspection. The complainant has described the results of this inspection as 'damning' – although this is not accepted by the College or the School. He has gone on to state that this inspection came about as a result of the behaviour of a teacher, and concerns raised about that behaviour. As well as being critical of the way in which the College and the School handled the results of the inspection (in particular, how it informed the parents of pupils), he also has subsequent concerns over the management and governance of the College/School. Given this, he is seeking to obtain answers to pertinent issues, and in particular *"get to the bottom of the failed inspection and the breakdown in governance of the school..."* He has also criticised the

behaviour of the College in dealing with his earlier requests, alleging that it has been evasive.

46. The Commissioner recognises that there is an assumption built into the FOIA that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to their activities. He notes that the context of these requests is an inspection by the ISI, which did make some findings against the School. Taking these factors into account, the Commissioner considers that these requests can be seen to objectively have a serious purpose or value in providing transparency into the events surrounding the inspection by the ISI and the subsequent actions of the College/School.

### *Conclusion*

47. The Commissioner recognises that there is a fine balancing act between protecting a public authority from vexatious requests and the promotion of transparency in the workings of an authority. The Commissioner has considered the arguments put forward by the complainant for his actions in submitting these requests and has balanced these with the arguments made by the College. He has also taken into account the wider context in which this complaint was made. In particular, the Commissioner has noted his conclusions regarding the pattern of requests being repeatedly made, and the obsessive quality (and quantity) of these requests. Having weighed all of the factors considered above the Commissioner has found that the arguments in favour of the application of this exemption by the College are of sufficient weight to support the engagement of section 14(1). As such, the Commissioner upholds the College's use of section 14(1).

## Right of appeal

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48. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

49. 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.
50. 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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