

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 February 2013

**Public Authority:** Islington Council  
**Address:** Town Hall  
222 Upper Street  
London  
N1 1XR

### Decision (including any steps ordered)

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1. The complainant requested information about the governance of a primary school. Islington Council (the Council) refused the requests as vexatious, citing section 14 of FOIA (vexatious request).
2. The Commissioner's decision is that the Council incorrectly relied on section 14(1) in this particular case.
3. He requires the Council to take the following steps to ensure compliance with the legislation:
  - issue a fresh response to the request which does not rely on section 14(1).
4. The public authority 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

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5. On 8 June 2012 the complainant wrote to Islington Council and requested information in the following terms:

*"As an Islington resident please could you make the following enquiry on my behalf?"*

*On May 1st 2012, [named individual1] (Cambridge Education Islington) emailed [named individual2] Education Service, RC Diocese of Westminster, stating the following:*

*'I can confirm that Cambridge Education on behalf of the London Borough of Islington has genuine concerns in relation to the governance of St Joseph's School and that action is needed to be taken in relation to the membership of the governing body and in particular the Chair of Governors'.*

*Please, would you ascertain from [named individual1] on what evidence, written or oral, did he make that assessment and subsequent recommendation to the RC Diocese of Westminster?"*

6. On 9 June 2012, he requested:

*"All copies of correspondence/emails/notes made between [named individual1] and the governor Support Team within Cambridge Education Islington for the period 1.1.2012 and 31.5.2012 regarding the Governance of St Joseph's school".*

7. Islington Council responded on 11 July 2012. It stated that the response was in relation to requests for information dated 8 June 2012 and 9 June 2012. The Council cited section 14(1) (vexatious requests) as its basis for refusing the request.

8. Following an internal review, Islington Council wrote to the complainant on 25 September 2012. It stated that the request at issue was for:

*"copies of correspondence between a named officer at Cambridge Education and the Governor Support Team within Cambridge Education regarding the governance of St Joseph's school".*

9. The Council upheld its citing of section 14.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 25 September 2012 to complain about the way his request for information had been handled. He argued that the Council was wrong to take into consideration his previous use of FOIA *"in an entirely separate and private matter"*.

11. He told the Commissioner:

*"I am of the firm opinion that both Islington Council/Cambridge Education Islington have sought to introduce the question of my use of FOI material in an entirely separate and private matter ..... My own private situation has nothing whatsoever to do with the information I sought concerning the governance of St Joseph's Primary school and for Islington Council/Cambridge Education Islington to combine differing FOI requests in such a manner is wrong."*

12. During the course of his investigation, the Commissioner asked the Council to clarify whether its internal review was in relation to the email of 8 June 2012 as well as that of 9 June 2012.
13. Although not specifically addressing that point in its response, the Council referred to the complainant's *"requests for correspondence between LBI officers and between LBI and the Diocese regarding the GB"*.
14. The Commissioner considers the scope of his investigation to be the Council's citing of section 14(1) (vexatious request) in relation to the information requested on both 8 June 2012 and 9 June 2012.

## **Reasons for decision**

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### **Section 14 vexatious requests**

15. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
16. In the Commissioner's view, section 14 of FOIA is intended to protect public authorities from those who might abuse the right to request information. He considers that the key questions for public authorities to consider when determining if a request is vexatious are:
  - (i) whether compliance would create a significant burden in terms of expense and distraction;
  - (ii) whether the request is designed to cause disruption or annoyance;
  - (iii) whether the request has the effect of harassing the public authority or its staff;
  - (iv) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;

(v) whether the request has any serious purpose or value.

17. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that, to a greater or lesser extent, the questions overlap and that the weight accorded to each will depend on the circumstances.
18. In his view, it is not necessary for all five factors to be engaged, but the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
19. In this case, the Council told the complainant:

*"In reviewing your requests for information, the council has taken both the history and context of your previous requests, as well as the subject and context of the present matter, into account.*

*It is the case that there has been a history of extensive and often acrimonious correspondence between you and various officers, and our experience is that responding to your requests for information only results in both an increased and significant burden of work and distress on our employees.*

*We also believe that these requests have the impact and the intention of harassing both the local authority and individual members of staff within it".*

20. The Commissioner has therefore considered these points when making his decision.

*Whether compliance would create a significant burden in terms of expense and distraction*

21. When considering the arguments under this heading, the Commissioner will consider more than just the cost of compliance, he will also consider whether responding would divert or distract staff from their usual work.
22. The complainant and the Council both acknowledge that there is a history of correspondence between the two parties. The Commissioner understands that the complainant's previous engagement with the Council spans a number of years and included complaints as well as requests for information.
23. While it acknowledged that his previous freedom of information requests and complaints were unrelated to his current issues, the Council told the complainant that:

*"they did demonstrate a modus operandi with regard to Freedom of Information requests".*

24. It also told him that it considers his contact with the service area a distraction and one that is *"is now frustrating normal service delivery"*.
25. During the course of his investigation, the Council provided the Commissioner with a helpful explanation about the background to, and context of, the requests under consideration. It also provided him with a chronology showing that, prior to the requests in this case, the complainant had submitted two FOI requests to the Council in the course of the previous two months. The Commissioner understands that the second of those requests - and the requests under consideration in this case - were follow-up requests, prompted by the response supplied to the preceding request. The Commissioner also understands that the complainant had made a further follow-up request subsequent to the requests under consideration in this case.
26. To engage section 14, the Commissioner expects the public authority to show that complying with the request would cause a significant burden both in terms of costs **and** also diverting staff away from their core functions.
27. In this case, the requests themselves would not appear to be a burden to the Council. Nor does the Commissioner consider that the Council has provided sufficient evidence as to how compliance with these requests would create a distraction. While its argument appears to be that it is unlikely to be able to draw the complainant's correspondence to a close by responding, the Commissioner is not satisfied that the volume, and subject, of the correspondence up to the time of these requests supports the Council's argument that the requests are vexatious.

*Whether the request is designed to cause disruption or annoyance*

28. In the Commissioner's view, as this factor relates to the requester's intention, it can be difficult to prove.
29. The complainant told the Commissioner that this request was made *"in response to my misgivings"* regarding information he had received in reply to another FOI request. He told the Commissioner:  
  
*"All I wished for was clarification of information already supplied to me".*
30. Having considered the matter, the Commissioner finds no evidence that the requests in this case are designed to cause disruption or annoyance. He has therefore not given any weight to this factor.

*Whether the request has the effect of harassing the public authority or its staff*

31. In considering this factor, the focus is on the likely effect of the request, not the information that might be disclosed in response: a reasonable person must be likely to regard having to deal with the request as harassing or distressing. The Commissioner considers that relevant factors could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
32. The Council told both the complainant and the Commissioner that the requests may have the effect of harassing the public authority and individual members of staff. However, the Commissioner would note that the weight he has been able to place on this has been reduced by the lack of a clearly explained link between the processing of the requests and the harassment which would be felt.

*Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable*

33. In considering this factor the Commissioner takes account of the wider context and history of a request as, in his view, it is unlikely that a one-off request could ever be obsessive.
34. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.
35. The Commissioner notes that the requested information does not appear to be on the same topic as other, earlier, correspondence between the complainant and the Council.
36. The Council acknowledged that the complainant's previous requests and complaints "*were unrelated to your current issues regarding St Joseph's school*".
37. The Commissioner also notes that, as evidenced by the chronology provided by the Council, the complainant's level of engagement with the public authority on this current matter is not particularly substantial.

*Whether the request has any serious purpose or value*

38. It is apparent that the complainant considers there is a serious purpose behind the requests in this case. In bringing his complaint to the

Commissioner's attention he said that he considered that the Council had responded to him:

*"in such a negative manner to disguise irregular communications that have taken place between Cambridge Education Islington and the RC Diocese of Westminster".*

39. Whether a request has value is not usually a relevant consideration in freedom of information requests, since FOIA is not concerned with the motives of an applicant, but rather in promoting transparency for its own sake. However, the Commissioner acknowledges that should any authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.

40. The Council made no comment in that respect.

*Is the request vexatious?*

41. The Freedom of Information Act was enacted to assist people in seeking access to recorded information held by public authorities. However, it was not the intention of FOIA to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.

42. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of FOIA and get in the way of answering other requests.

43. The question of when a request should be refused as vexatious is a question of balance. It is clear that the threshold for refusal should not be set too high - so that a public authority would need to go to extraordinary lengths in dealing with a difficult applicant. By the same token, nor should the bar be set too low - with the effect that legitimate enquiries might be unfairly refused.

44. It is also a well-established principle that when considering the application of section 14(1), the consideration should be on whether the particular request in question was vexatious rather than the requester. While it is appropriate to consider the context of the requests that have been made, an authority must ensure that it does not cross the line into relying too much on the identity of the requester and its previous knowledge of their behaviour in relation to a different issue.

45. In order to reach a reasoned conclusion in this case the Commissioner has taken into account the context of the requests and the history of the relationship between the two parties as well as the submissions they provided to him. In reaching his decision, the Commissioner recognises that, given the context in which the information was requested, and its

previous experience of this complainant, the Council may well have perceived some aspects of the requests as forming part of a wider pattern of behaviour that made the Council deem them vexatious.

46. However, the Commissioner is not satisfied by the Council's arguments that, up to the time these requests were made, they would pose a significant burden for the Council or that they are designed to cause disruption or annoyance.
47. He has therefore concluded that the Council has not demonstrated sufficient grounds to deem the requests to be vexatious.
48. Accordingly, the Commissioner considers that, on balance, the Council was incorrect on this occasion to refuse to comply with the requests on the basis of section 14(1) of FOIA.



## Right of appeal

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49. 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)

50. 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.
51. 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 .....**

**Jon Manners**  
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