

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2021

Public Authority: Aylsham Learning Federation

Address: Sir Williams Lane

Aylsham

Norfolk

NR11 6AN

Decision (including any steps ordered)

1. The complainant has requested details of staff policies and action plans. Aylsham Learning Federation ("the Federation") refused the request as vexatious.
2. The Commissioner's decision is that the Federation was not entitled to rely on section 14(1) of the FOIA to refuse the request.
3. The Commissioner requires the Federation 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(1) of the FOIA
4. The Federation 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 2 April 2021 the complainant requested information of the following description:

"1) Please provide your policy that deals with [redacted] or similar including its date of adoption.

"If it was adopted in the last year please provide any preceding versions of the policy adopted in the last 5 years including dates of adoption.

"2) Norfolk County Council promotes the use of [redacted] Action Plans and [redacted] Recovery Action Plans in their schools including Aylsham Learning Federation.

"Please provide the number of each plan completed at your federation per academic year since September 2015. If you do not use such plans please provide the same data for the nearest equivalent and a copy of the proforma used.

"3) Please provide the number of [redacted] (or similar) commissioned primarily as the result of employee [redacted] for each academic year since September 2015."

6. On 27 April 2021, the Federation responded to both requests. It refused them as vexatious.
7. The complainant requested an internal review on 3 May 2021. The Federation sent the outcome of its internal review on 27 May 2021. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 25 May 2021 to complain about the way his request for information had been handled. Given the common themes underlying the two requests and a third request submitted on 25 May 2021, the Commissioner decided that it would be more efficient to deal with all three complaints simultaneously. He therefore only required the Federation to provide him with a single submission in respect of all three complaints – although he noted that the Federation was free to submit any request-specific arguments if it wished to do so.
9. Neither the complainant nor the Federation objected to this approach. The Commissioner has therefore used their respective submissions as the basis for this decision and for the two other notices that he is issuing today in respect of the other complaints.
10. The Commissioner considers that the scope of his investigation is to determine whether or not the request was vexatious.

Reasons for decision

Section 14 - Vexatious

11. 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.*

12. 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.

13. 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.

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

15. *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).

16. 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.
17. 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"*.
18. 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.
19. 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 Federation's position

20. The Federation's position is that the complainant's requests were improperly motivated and therefore an abuse of process.
21. The Federation explained that a particular incident ("the Incident") had occurred in 2020 which had had a significant effect on students and staff.² It argued that the complainant was attempting to use the FOIA process as a means of conducting his own investigation into the Incident – despite him having no grounds or standing to carry out such an investigation. It argued that this was an abuse of the FOIA process.
22. The complainant had submitted two earlier requests for information that the Federation had complied with in full which, it argued, showed it had met its transparency requirements.

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

² The Federation asked for specific details of the Incident to be removed from the decision notice. The Commissioner has redacted some of the wording of the request accordingly.

23. The tone of the complainant's correspondence was, the Federation argued, "rude and inappropriate" and his motivation "objectionable and unreasonable." The Chair of Governors had felt "harassed" by the complainant's correspondence and had reported the matter to the police.
24. The Federation argued that it had done all it could to prevent the Incident from occurring and that there had been no formal finding that the Federation had been in anyway negligent. It argued that the complainant's suspicions were "unfounded."
25. Finally, the Federation provided the Commissioner with a copy of legal advice that it had received. The legal advice also took the view that the request was vexatious and any investigation motivated by rumour and hearsay rather than facts. The extent to which this advice was adopted by the Federation as its position was unclear.

The complainant's position

26. The complainant, unsurprisingly, argued that his requests were not vexatious.
27. He argued that none of the requests should be burdensome given that the information he was seeking was, for the most part, individual documents which the Federation should be able to locate easily.
28. The complainant did not dispute that his requests were linked to the Incident, but argued that he was pursuing a legitimate line of inquiry, as there was a strong public interest in understanding how the Federation dealt with some of the issues relating to the Incident and what changes, if any, it had made since.
29. Finally, the complainant considered that the Federation had failed to comply with the procedural requirements of the FOIA. His view was that this showed a lack of commitment to transparency on behalf of the Federation which he considered was likely to extend towards its treatment of the Incident.

The Commissioner's view

30. The Commissioner notes that relying on section 14 of the FOIA is an extreme course of action. A public authority relying on this exemption is not required to communicate any information nor even establish whether any relevant information is held.
31. It thus follows that the threshold for finding that a request is vexatious must be a high one. In the Commissioner's view, the Federation has fallen just short of meeting that threshold.

32. The complainant's motivation in making this request does cause the Commissioner some concerns. It would be inappropriate for the complainant to attempt his own armchair inquiry into the Incident. There are other authorities far better-placed to conduct such inquiries and, if the complaint does have genuine, evidence-based concerns, he should approach those authorities.
33. That having been said, the Commissioner does not consider that this particular request was burdensome. It is fairly restricted in scope and relates to documents which, for the most part, are likely to be easily retrievable. The Commissioner does not consider it likely that a significant diversion of resources would be necessary in order to respond – even if some redactions were required to protect sensitive details.
34. Whilst the Commissioner does accept that the complainant has been unnecessarily persistent in chasing the Federation for responses³, he does not accept that the correspondence is rude or aggressive. Whilst it is occasionally blunt, the Commissioner does not consider that this crosses the vexatious threshold.
35. The Commissioner notes that FOIA is usually motive-blind and the complainant was not obliged to divulge his motivation for making this request or any of his other requests.
36. Whilst the Federation has been given definitive evidence of the complainant's motivation, the Commissioner considers it important to note the circumstances in which that evidence was obtained.
37. On 6 February 2021, the complainant contacted the Federation's Chair of Governors to highlight the fact that he had made a new request for information. The Chair responded two days later to acknowledge the request, but also added:

"As chair of the federation, I am interested to know what has triggered your line of enquiry and just wonder if you are able to tell me what has prompted your interest please? I have been chair for several years now and yours is the first such request we have received."

³ The Commissioner also considers it helpful to note at this point that, in recognition of school holidays, educational establishments are entitled to take the longer of 20 school days (ie. days when pupils would normally be in) or 60 working days to respond to requests for information.

38. The complainant responded to that correspondence on 16 February and said that he did not wish to discuss his purpose until he had received the information he had requested.
39. The Chair contacted the complainant again the following day and again asked him why he wished to receive the information. A week later, the complainant responded and explained his purpose. It is apparent from the correspondence that the Federation was unaware of the complainant's purpose until he himself divulged it. Had this exchange not taken place, it is unclear whether the Federation would have attempted to refuse this or subsequent requests as vexatious.
40. The Commissioner considers that it is acceptable for a public authority, faced with a fairly broad request, to ask a requestor whether there is specific information that they are interested in. Not only is this good practice, but, depending on the circumstances, it may form part of the authority's obligation to provide advice and assistance. This is of benefit to both requestor and public authority, as the former receives the information that is of most interest and the latter is required to spend less time searching or assessing irrelevant information.
41. What a public authority may not do is continue to press a requestor to explain their motivation for making a request.
42. In this case, the Commissioner's view is that the Federation has caused the complainant to explain his motivation in a manner he (the Commissioner) considers inappropriate. It would be unfair, in the Commissioner's view, for the Federation to be entitled to benefit from such inappropriate tactics.
43. Furthermore, whilst the Commissioner considers attempts, by amateurs, to investigate the Incident to be inappropriate, he does recognise that there is a public interest in understanding how the Federation deals with some of the broader matters raised by the Incident. Those latter issues are much less likely to be sensitive or to require the disclosure of confidential information. At this point in time, it is not clear whether the complainant is intent pursuing the former or the latter line of inquiry, but the Commissioner will, in the circumstances of this case, give him the benefit of the doubt.
44. The Commissioner therefore considers that the request was not vexatious and therefore the Federation was not entitled to rely on section 14(1) of the FOIA to refuse it.

Other matters

45. The Commissioner wishes to place on record that this notice does not amount to an endorsement of the complainant's behaviour. Some of the correspondence the Federation provided does indicate that the complainant may attempt in future to begin pursuing his own armchair inquiry into the Incident. As the Commissioner has already pointed out, that would be an inappropriate use of the legislation, as there are other authorities better-placed to conduct such inquiries.
46. The Commissioner reiterates that this was a marginal decision and that he is unlikely to uphold further, similar, complaints if he considers that the complainant has begun to use his right of access to information inappropriately.

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
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