

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2023

Public Authority: Abbey Multi-Academy Trust
Address: c/o Chapter House
Abbey Grange C of E Academy
Butcher Hill
Leeds
LS16 5EA

Decision (including any steps ordered)

1. The complainant requested information from Abbey Multi-Academy Trust (the Trust) relating to a change of logo at one of its schools. Having provided some information, the Trust later withheld some information falling within scope under section 43(2) of FOIA (commercial interests). After the Commissioner began his investigation, the Trust also cited section 14(1) of FOIA (vexatious requests) to refuse the request.
2. The Commissioner's decision is that the request was vexatious and therefore the Trust was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

Request and response

4. On 22 March 2022, the complainant made the following request for information to the Trust:

“Could I please make a request for any information that the Abbey MAT and its academies hold regarding the change of logo for St Chad's C of E Primary School.

This may be (but is not limited to) design briefs, invoices, funding agreement, emails, school governors' meeting minutes, trustees' meeting minutes, other internal meetings minutes, parents' consultation feedback forms and other complaints/concerns raised and recorded by the school or trust.

Could I please also request any information [redacted] held about Bible distribution at St Chad's C of E Primary School and/or the decision to remove these from graduation ceremonies and allow parents/carers to opt out. This may be (but is not limited to) emails, staff newsletters/communications, school governors' meeting minutes, trustees' meeting minutes, other internal meetings minutes and approved wording to be amended online.”

5. The Trust responded on 22 April 2022 and provided information to the complainant via a link.
6. On the same day the complainant queried whether all the requested information had been provided by the Trust.
7. On 25 April 2022, the Trust stated that the relevant information had been included in its response.
8. The complainant then asked for an internal review because they did not accept that they had been provided with all the information falling within scope of their request. They considered that they had been provided with some information outside of scope.
9. The Trust provided an internal review on 28 April 2022 in which it confirmed that no further information was held. On the same day, the complainant asked about one particular part of their request where they believed that more information should be held:

“Could I please have access to the 'existing Trust service level agreement for general marketing services' - including costs- for the company that the Trust is working with to design the new school logos”

10. On 29 April 2022, the Trust accepted that it did hold some relevant information, but withheld it under section 43(2)(commercial interests) and the complainant subsequently requested a review.
11. On 29 May 2022 the internal review maintained the Trust's position that the information was exempt under section 43(2).

Scope of the case

12. The complainant contacted the Commissioner on 29 June 2022 to complain about the way their request for information had been handled.
13. On 16 November 2022 the Trust responded to the Commissioner's investigation letter and explained that it had reconsidered the request and was now citing section 14(1), considering it to be vexatious. The complainant had been informed on the same date.
14. Another internal review on 22 November 2022 upheld the Trust's position regarding section 14.
15. The Trust later confirmed to the Commissioner in a telephone call that it was maintaining its citing of both section 43(2) and section 14(1) of FOIA regarding this request.
16. The Commissioner firstly intends to consider section 14 of FOIA and decide whether it has been correctly or incorrectly cited. The Trust had already taken the steps necessary to comply with the request (identifying relevant information and considering exemptions) before it cited section 14. Section 14 does not require that a public authority even confirm or deny whether it holds information. However, the Trust's position that section 43(2) of FOIA applied would be the default position if section 14 was found not to apply.

Reasons for decision

Section 14(1) – vexatious requests

17. 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.

18. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ 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.
19. 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.
20. However, the ICO 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.
21. 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*")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
22. *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.
23. The four broad themes considered by the Upper Tribunal 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).

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

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

24. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They 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 Trust's view

25. The Trust presented some arguments to the Commissioner that were confidential and cannot be included here. It made its arguments under the four headings derived from the Dransfield UT decision outlined earlier – burden, motive, value or serious purpose and harassment/distress to staff.

26. Burden -

The Trust emphasised the number of FOIA requests that had been made by the complainant along with data protection requests, complaints and “ancillary correspondence”. This posed a “significant burden” on the Trust. The actual amount of information requests appears to be four that predated this request. However, there were many other interactions presented in spreadsheet form that the Trust believes demonstrate a vexatious pattern of behaviour and unreasonable persistence. Any response from the Trust “triggers further correspondence or statutory requests for information or complaints”. It concludes that there has been a historical burden and “a potential future burden on the Trust” which represents a disproportionate burden on its resources.

27. Motive -

The Trust stated that it understood its obligation to consider each request on its merits and that an FOI requester is not required to demonstrate their purpose or motive. In the context of section 14(1) though, a public authority can consider rationale or justification within the “wider context of the course of dealings between the public authority and the FOIA requester”. The Trust contends that background and motive are relevant here in its assessment that the request is vexatious. It argues that the complainant has “demonstrated a harassing pattern of behaviour” targeting certain individuals. The Trust maintains that the complainant refused to engage with the complaints process that made it impossible to resolve any valid concerns they might have. It suggested to the complainant that, “The sustained correspondence and repeated requests are due to a personal grudge towards the governing body and Trust staff”.

28. Value or serious purpose -

The Trust considers that the complainant is abusing their right of access under the FOIA as a means of pursuing a personal vendetta against it within the "context of a past grievance and to harass members of staff and volunteers". The Trust can see no public interest in disclosing the requested information whilst acknowledging that the FOIA is

"an important tool for the public to access information held by public authorities in order to hold them accountable for their use of public funds and decisions affecting the public".

Nonetheless the Trust considers that responding to "frequent requests...is a disproportionate use of time and limited resources" and that "this request is of no value to the wider public". It disputes the complainant's view (set out later) that their complaints have been anything other than "partially upheld".

29. Harassment/distress to staff -

The correspondence from the complainant is "frequently long and detailed and this has caused a great deal of distress to the staff and volunteers tasked with responding". The Trust describes the correspondence as "harassing and confrontational in nature...on multiple occasions included personal comments regarding individuals". Further information was provided that cannot be detailed here.

The complainant's view

30. The complainant refuted the Trust's view by responding under the same headings both to the Trust and the Commissioner.

31. Burden -

The complainant argues that they have only made FOI requests as "a last resort due to the combative and secretive nature of the Trust, particularly in dealing with very serious issues" at the school. They maintain that their initial requests are

"always straightforward and only become more elaborate due to the evasive nature and behaviour of the Trust (e.g. who have in the past claimed to not hold any information, to then find more later when challenged with evidence to the contrary.)"

The complainant has provided the Commissioner with a detailed breakdown of one particular complaint that he has not set out here but that they argue was a burden caused by the Trust.

32. Motive -

The complainant has set out their motive "to improve the education and environment" at the school "for the benefit of all pupils..." It is not to target individuals. Their argument is that the public deserves to know and question how those funds are spent for the educational benefit of children and that the Trust should be more transparent. The complainant also says that they have never refused to comply with the complaints process. They have though,

"asked the Trust to progress a complaint to the next step when a deadline has been missed due to the inaction/delayed dates offered by the Trust, who has unfortunately struggled multiple times to adhere to its own complaints process".

33. Value or serious purpose -

The complainant states that the only two complaints they have made ended in action being taken to address issues but that the Trust does not welcome scrutiny. They deny that they have a personal vendetta and have provided their serious purpose in engaging with the Trust in this way. This essentially comes down to the spending of public funds in relation to the request.

34. Harassment/distress to staff -

The complainant considers their contact with the Trust to be courteous and more courteous than that shown by the Trust to them. However they do acknowledge that their communications have been "terse" at times and apologise if this was the case. They deny making personal remarks about a member of staff "other than to highlight what I believed (and evidenced)...in a panel review, which the Trust refused to investigate". The complainant argues that they did not follow up on issues unless a fair amount of time had elapsed or a deadline had been missed by the Trust. The complainant does not consider this to be unreasonable.

The Commissioner's decision

35. 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.
36. The Commissioner has been provided with the background and context to this complaint and certain arguments that cannot all be included here for reasons of confidentiality.

37. However, the Trust has provided the Commissioner with a spreadsheet that has many records of communication, though some are irrelevant and there is repetition. The Commissioner has considered the wider correspondence with the complainant for contextual reasons and found that there is a level of challenge that is robust, though he does not consider it aggressive. The complainant also has a serious purpose in making their requests. Nevertheless a request does not need to show evidence under all the usual indicators of vexatiousness to be vexatious. The wider correspondence demonstrates a pattern of behaviour that has led to a burden that impacts on the Trust's limited resources. It is for this reason that the Commissioner finds the request vexatious. Therefore the Trust was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

38. 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

39. 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.
40. 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

Janine Gregory
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