

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 March 2012

Public Authority: The Governing Body of
Acklam Grange School

Address: Lodore Grove
Middlesbrough
TS5 8PB

Decision (including any steps ordered)

1. The complainant has requested information relating to the design, construction and use of on-site parking facilities from the period from 1 September 2008 to date. The School refused to provide the requested information under regulation 12(4)(b) and 12(4)(e) of the Environmental Information Regulations 2004 (EIR).
2. The Commissioner's decision is that Acklam Grange School (the School) has correctly applied regulation 12(4)(b) EIR.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 11 November 2011, the complainant wrote to the School and requested information in the following terms:

"Please supply copies of all documents (including but not necessarily exclusively all letters (internal and external), memos (internal and external) and emails (internal and external), minutes of meetings, staff instructions/messages and reports to governors/other bodies) held by the school relating to the design, construction and use of on-site parking facilities from the period from 1 September 2008 to date.

If possible please supply the information by email. If that is not possible please supply the information on CD (by preference) or in hard copy to 85 [named address].

5. The School provided a response to the complainant on 5 December 2011 in which it refused to disclose the information he requested on the basis of the exceptions contained in 12(4)(b) and 12(4)(e) EIR.
6. The complainant requested an internal review of the School's decision on 5 December 2011. The complainant said that, "I am prepared to restrict my request to the documents detailing the evidence behind the School's refusal to accept the opinion of Middlesbrough Borough Council that the Heythrop Drive car park is compliant within its design to facilitate student pick up and drop off." On 8 December 2011 the School wrote to the complainant with the details of the result of the internal review it had carried out. It upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner will consider whether the School was correct to apply regulation 12(4)(b) EIR and regulation 12(4)(e) EIR in refusing the request for information.

Reasons for decision

Regulation 12(4)(b)

9. Regulation 12(4)(b) EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. The Commissioner considers that a request for information is manifestly unreasonable under Regulation 12(4)(b) if it would be considered vexatious for the purposes of the FOIA.
10. The School explained that the request is manifestly unreasonable for two reasons. It said that it would incur unreasonable costs for the School and an unreasonable diversion of resources. It also said that the request was vexatious.
11. In terms of cost and resources the School explained that bearing in mind the complexity of the request and the range of information and range of sources, several members of school staff would need to be involved. It estimated that it would take at least 21 hours and would have a significant burden on the School and its resources.
12. The School explained that supplying copies of all e-mails would involve members of School staff searching through all its archived e-mails in

order to find the hundreds of e-mails relating to the building programme, and sifting through the significant number of senders and recipients. It estimated that this would take at least 8 hours for a single member of staff to complete this task. Further time would be required to contact members of staff about their email accounts, including some staff who have now retired.

13. It explained that supplying all memos, staff instructions and internal messaging archives would involve the School Office Manager and the School Director of Resources searching through all their computer files over the past 3 years. It estimated that it would take each of these individuals 3 hours to complete this task.
14. It said that supplying minutes of all meetings would involve School staff searching through documentation relating to a number of different groups including, the building project team, the School management team, the School pastoral team, whole School staff meetings, the School senior leadership team, the School administration team and the School governing body. It said that this would involve 4 members of staff and it estimated that it would take at least 1 hour for each of those staff members to complete this task.
15. It explained that supplying copies of all letters would involve School staff searching through its records over the past 3 years for all letters between the School and third parties involved in the building project, all parent newsletters and all community newsletters. It said this would involve 2 members of staff and it estimated that it would take at least 1 hour for each of those staff members to complete this task.
16. It said that supplying copies of all governing body reports would involve School staff searching through its computer and paper records of all governing body meetings and all sub-committee meetings. It estimated that this would take 1 staff member 1 hour to complete.
17. Finally the School acknowledged that even though the complainant explained at internal review that he was prepared to limit his request (as set out at paragraph 6 of this Notice), it would still be as time consuming and burdensome upon staff resources as it would still require staff to undertake assessments of all contents of emails and other documents to ascertain whether or not information was held.

The Commissioner accepts that dealing with this request would be time consuming and would divert resources of a number of staff members.

18. In relation to whether the request is vexatious the Commissioner considers that the key questions for public authorities to consider are set out below:

- 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

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

- 19. The School explained that the request is voluminous in nature as the information requested is wide ranging and covered a number of years. Even dealing with the refined request would still require the School to search the same amount of information to determine what was held.
- 20. Moreover the School explained that it did not consider that dealing with this request would satisfy the complainant and would lead to further requests being made. It explained that the School has a limited number of staff who would be diverted from their ordinary duties to deal with this request.
- 21. The School provided the Commissioner with emails dating back to 8 February 2011 up to the date of the request although it did say that correspondence dated back 3 years. The emails consisted of enquiries, complaints and FOIA requests relating to the Schools building development including car parking and drop off facilities, lighting and subcontractors. The Commissioner has viewed this information and considers that there were around 33 emails sent to the School, 17 of which were FOIA requests leading up to the FOIA request made on 14 November 2011. The School responded to most of the previous enquiries and requests.
- 22. The Commissioner considers that the emails demonstrate that the Schools responses led to further requests being made by the complainant which put a further burden upon the Schools resources.
- 23. The Commissioner considers that the School has demonstrated that compliance with the request would create a significant burden in terms of expense and distraction.

Whether the request is designed to cause disruption or annoyance

24. The School explained that over a three year period the complainant submitted numerous wide ranging and voluminous requests to the School directly and to the local authority (Middlesbrough Borough Council) concerning the development of the School and other subjects. It said that during this time every effort had been made by both the School and the local authority to address the complainant's concerns and provide him with information to fulfil his requests. The School explained to the complainant that due to the longstanding issues surrounding the requests and the amount of time those requests were taking the School to deal with, it suggested setting up a joint meeting to try to resolve the complainant's ongoing concerns. The complainant was reluctant to agree to attend a meeting but subsequently said he would be willing to attend during the evening (between 7pm and 8pm). The School explained that the meeting would need to take place during the working day so that all of the relevant parties would be able to attend. The complainant said that he was unable to attend a meeting during the working day. The meeting could not therefore go ahead. The School decided that it could no longer continue to deal with the volume of requests submitted by the complainant as it was causing such disruption on teaching staff and therefore pupils within the School.
25. Furthermore the School explained that some of the emails were derogatory towards staff members and that this has caused distress and annoyance amongst teaching staff.
26. The Commissioner considers that the School did explain to the complainant that his requests were causing disruption to those who were responding to them which is why it suggested setting up a meeting to try to resolve the ongoing issues. The complainant was however unable to attend a meeting at a suitable time and therefore this was unable to go ahead. As the complainant was unable to attend a meeting the Commissioner does not consider that this would demonstrate that the further requests were designed to cause disruption or annoyance.
27. The Commissioner is aware that some of the emails were derogatory towards staff which the School has explained has caused distress and annoyance. The Commissioner considers that this does not however demonstrate that the requests were designed to cause disruption or annoyance to School staff.

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

28. The School reiterated the fact that some of the emails were derogatory towards staff which has caused distress to individual staff members. It also said that due to the number of communications which have taken place over a number of years some staff were also now feeling pressurised and harassed.
29. The Commissioner considers that the tone of the emails have caused distress to some members of staff. However the Commissioner does not consider that the School has provided sufficient evidence to demonstrate that the requests had the effect of harassing the public authority.

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

30. The School explained that the most recent request is voluminous and would take a significant amount of time and create a significant diversion of staff to deal with. It said that even if it were to deal with the request or if it were to assist the complainant in refining the request so that it wasn't so voluminous, it would continue a pattern of behaviour which the School considers to be manifestly unreasonable. It said that the complainant had submitted numerous complaints, enquiries and FOIA requests over a period of three years and that any response provided leads to other requests being submitted. The requests and enquiries which the Commissioner has viewed dating back to 8 February 2011 relate to the School's building development and specifically car parking facilities and drop off facilities, sub contractors and lighting. In addition to the emails which the complainant has been sending to the School he has also been corresponding with the local authority and the Future Project Team which is employed by the local authority about similar issues relating to the School.
31. The Commissioner considers that the wider context and history of this request is relevant in this case. He has noted the large volume of FOIA requests, enquiries and complainants relating to similar issues at the School, the significant length of time within which this correspondence has been exchanged, the fact that responding to requests or enquiries often led to further requests or enquiries being made and the voluminous nature of the request dated 11 November 2011. In light of these factors he does consider that it can fairly be categorised as obsessive or manifestly unreasonable.

Whether the request has any serious purpose or value

32. The School has explained that the request dated 11 November 2011 related to the drop off facilities at a particular entrance. The School is aware of the issues with the current facilities and is endeavouring to make changes to the current facilities.
33. The Commissioner accepts that the School is taking steps to address the issues raised by the FOIA request but as these are currently unresolved this does not demonstrate that the request has no serious purpose or value.
34. The Commissioner considers that the request is voluminous and would require a significant amount of time and diversion of the Schools resources to deal with. He considers that it would create a significant burden in terms of expense and distraction and can otherwise fairly be characterised as obsessive or manifestly unreasonable.
35. The Commissioner therefore considers that regulation 12(4)(b) was correctly engaged and he has therefore gone on to consider the public interest in this case as required by regulation 12(1)(b).

Public interest arguments in favour of disclosing the requested information

36. The Commissioner considers that there is a public interest in the School operating in an open and transparent manner and being accountable for its actions and decisions made.
37. The Commissioner has also taken into account the fact that there is a serious purpose or value behind the request which strengthens the public interest arguments in favour of disclosure.

Public interest arguments in favour of maintaining the exemption

38. The School said that the staff involved in responding to the requests are teaching staff, and due to the voluminous nature of this request and the significant number of prior requests and enquiries, it is diverting those staff away from the core duties. The School said it is not in the public interest to divert School resources to this degree.

Balance of the public interest arguments

39. Whilst the Commissioner considers that there is a public interest in the School being open, transparent and accountable, he also considers that there is a strong public interest in not posing a manifestly unreasonable burden upon the School's resources. The Commissioner

accepts that there is a serious purpose or value behind the requests but in this case it is not sufficiently strong enough to override the significant burden and the obsessive nature of the requests. The Commissioner has therefore decided that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception in this case.

40. As the Commissioner considers that regulation 12(4)(b) EIR was correctly engaged in this case, he has not gone on to consider the School's application of regulation 12(4)(e) EIR any further.

Right of appeal

41. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

42. 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.
43. 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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