

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 June 2015

**Public Authority:** Durham County Council  
**Address:** County Hall  
Durham  
DH1 5UF

#### Decision (including any steps ordered)

---

1. The complainant has made two requests for information relating to an investigation conducted by Durham County Council (the council) into a specified pupil referral unit (the PRU). The council refused the requests as it considered them both to be vexatious under section 14 of the FOIA.
2. The Commissioner's decision is that the council has correctly applied section 14 to the requests. He therefore does not require the council to take any steps in this case.

#### Request and response

---

3. On 23 November 2014, the complainant wrote to the council and requested the following information:

*"Can you please tell me the date the impact staff came forward and the reason*

9.

*When JLS did home visit with [Complainant], some impact staff did come forward. In the reply*

*Can you please give me the date on all the statements what were made by staff*

*CC – How would you know?*

*XX – This was going on in November and December – He stated that he was being bullied as he was made to work by himself as he was horrible to other children. [Specified child] was working in room 2 in a shielded work area with a teacher or LSA present to support him at all times.*

*CC – Was he allowed to have lunch with any other children?*

*XX – He was a trouble causer who constantly encouraged other pupils to join in with him.*

*NUT – is there a record of this?*

*XX – There should be.*

*CC – What allegations were [Specified child] and [complainant] making?*

*XX – Apparently [complainant] said that the previous school were breaching his human rights in insisting that he wasn't allowed into the school unless he cut his ponytail off.*

*CC – [Specified child] wanted to be back at the PRU?*

*XX – [Specified child] and [complainant] always wanted him to be back. He stirred trouble from the day he came back. [Complainant] came in for a meeting as he wanted to send him to Elmore School."*

4. The complainant made another request for information to the council on 26 November 2014:

*"Can I please request FOI*

- The number of children on the role in the PRU March/April 2011*
- The number of children on the role in the PRU October/November 2011*
- The number of children on the role in the PRU January 2012*
- The number of children on the role in the PRU March/April 2012*
- Can I also have staff numbers for the same dates.*
- Council I have the number of children interviewed regarding the PRU investigation in 2012.*
- Could I have the number of staff interviewed regarding the PRU investigation in 2012.*
- Could I have the health and safety recommended number of the capacity of the PRU for 2010/2011/2012/2013/2014 and date.*
- Could I have the highest number of staff at the PRU for 2010/2011/2012/2013/2014 and date."*

5. The council responded on 11 and 16 December 2014 respectively. In both cases the council stated that it considered the requests to be vexatious. It advised that it considered both requests to demonstrate unreasonable persistence in relation to an event that took place in 2011 at the PRU and was investigated in 2012. It also stated that the requests would place an unreasonable burden on the authority in view of the context and history of the requests.
6. Following an internal review of each request, the council wrote to the complainant on 20 January 2015. It upheld the position that the requests were vexatious.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 27 January 2015 to complain about the way his requests for information had been handled.
8. The Commissioner considers the scope of the case to be to determine whether the council was correct to refuse the requests as vexatious under section 14 of the FOIA.

### **Reasons for decision**

---

#### **Section 14 – vexatious requests**

9. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:  
  
*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".*
10. The Commissioner has published guidance on applying section 14(1) of FOIA.<sup>1</sup> The Commissioner's guidance states that the relevant consideration is whether the request itself is vexatious rather than the individual submitting it. Sometimes, it will be patently obvious when requests are vexatious. In cases where it is not so clear-cut, the key

---

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

question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.

11. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of various encounters between the parties which has led to the requests in question here. The council relies on this context and history as well as the unreasonable persistence of the complainant and the burden he has placed on the authority through his requests and other interactions.

### **Council's position**

12. The council has separated its interactions with the complainant into 3 stages. The first stage is the original incident and its aftermath, up until the point the complainant contacted the information management team. This dates from February 2012 to October 2012. During this stage, the complainant was in contact with the affected service areas on an almost daily basis. He had a single point of contact (SPOC) within Education Support Services with whom he had a great deal of contact. The council has advised that the complainant was known for being aggressive on the phone and that much of his contact included calls and texts in the evening, sometimes as late as 10pm. It also explained that even though he had a SPOC, he continued to call and contact other officers across the services.
13. The council has provided a list of contact records retained from 2012. This list is not a complete list of the contact the complainant had in the time period, but does indicate that the volume of contact was high. For example, it lists 7 telephone messages received by the administration team for his SPOC within the stage one time frame. Despite the fact that he had a SPOC, it also lists 31 other contacts in the form of texts to other individuals and telephone and face to face contact with members of the Parent Partnership Service. The Commissioner recognises that this list is not exhaustive, but it does demonstrate that there was a large volume of contact with the council in the time frame.
14. During the first stage, the council kept the complainant informed of the progress of the investigation, but as it was ongoing, it was not able to provide him with much detail.
15. In October 2012, the information management team became involved as the council deemed that the complainant's contact had moved from normal course of business and serviced based to a corporate based

approach. From October 2012 to January 2014, the council attempted to manage the complainant's correspondence by dealing with it as formal requests for information. The council refers to this as the second stage. It has explained that the frequency of contact remained high. The complainant continued to make regular calls and emails to both the information management team and the service areas asking about his requests and seeking to overturn previous FOI decisions directly with what he considered to be the relevant service area for the requested information.

16. In this time period, he made 16 FOI requests and had 8 internal reviews. Each of the requests was directly related to the PRU, the associated investigation and subsequent disciplinary procedures.
17. The complainant also referred 9 cases to the Commissioner. Some of these cases were closed by means of a decision notice. In particular, the case referenced FS50490413 was appealed by the complainant to the First Tier Tribunal (Information Rights) ("the Tribunal")<sup>2</sup>. This appeal was dismissed in February 2014 with the Tribunal finding that the council was correct to have withheld the investigation report.
18. In addition to the volume of requests and correspondence, the council has explained that the behaviour of the complainant during the second stage became more unduly burdensome on the council. It stated that staff felt targeted by the complainant and his requests. For example, the council has referred to an email from the complainant to his SPOC on 12 December 2012 which it advises was considered as threatening by the recipient, particularly as it mentioned her children by name. The email stated:

*"I only want wot you would want for [children's names] the write thing and for the cc to me the info or ill get it another way I told you I'm not just someone you can tell no to one way or another I will get it its my way now not the cc way..."[sic]*

19. The council has also referred to the following text messages sent to the SPOC at around 11:30pm on 11 October 2013:

*"I'll see you in the morning at [postcode and house name] thanks [complainant]"*

---

<sup>2</sup> EA/2013/0168 Steven Hepple v ICO and Durham County Council

*"Or I might drop round [first named council officer's] [postcode and house number]"*

*"U the cc have a lot to answer for if you want to make me wait for a out cum I can also make you wait for my decision with how to proceed with the lying lo life cc I have a list of 10 including [second named council officer] [postcode and house number] now I hope the cc understand the position u put us in as a family and as any dad's first prince able is always protect your children I'm far from the thick person u think I am but you just keep hidden behind your government department to keep your job because I regard the cc management as worse than the culprits for not speaking out I hope this is always with u best wishes [complainant]" [sic]*

20. These messages were reported to the police as harassment and a Police Information Notice was served on the complainant under the Protection from Harassment Act 1997 informing him that if he continues harassing behaviour of this nature, he would be liable for arrest and prosecution. This action resulted in the council placing the complainant on its Potentially Violent Person Log in October 2013. On review he was removed from the log in October 2014.
21. The Tribunal hearing for the case FS50490413 considered two exemptions that the council applied to the complainant's request for a copy of the investigation report into the PRU following his allegation. The exemption that the Commissioner had based his decision notice on was section 40(2). It was his decision that the information was personal data and it would not have been fair or in the public interest to disclose it. The Tribunal also considered other exemptions applied by the council at the time of the request, section 31, law enforcement and section 38, health and safety.
22. In its consideration of section 38, the Tribunal commented on the messages sent to the SPOC on 11 October 2013. It stated *"we drew the clear impression that the texts had been transmitted with the purpose of menacing those whose addresses the Appellant had acquired."*<sup>3</sup>
23. On 26 November 2013, the council wrote to the complainant in an attempt to draw a line under matters. It informed him that the investigation into the PRU was now concluded and provided him with an overview of the outcomes of his specific complaints. It explained that it was not able to give more detail about the investigation due to the

---

<sup>3</sup> EA/2013/0168 paragraph 37

confidentiality of all those involved. It explained that this matter had been subject to an ICO decision notice and was currently under appeal to the Tribunal.

24. The letter also summarised that a total of 30 FOIA and data protection requests had been received by the council to date and that he had been provided with response to them all with the exception of the Tribunal case and one other case with the ICO. The council informed the complainant that as the investigation had been concluded, it was now closed and it would not enter into further communication about matters that had been concluded in the investigation. It also advised him that it would continue to respond to requests for information provided that they are not repeated or do not become vexatious. It provided a link to the Commissioner's guidance on vexatious requests.
25. Shortly after this letter, the complainant submitted a further request for current policies and procedures at the PRU and also information relating to the number of children restrained, the number of children put in isolation, the number of second return pupils at the PRU and the number of these put in isolation on their first day back. The council responded to this on 20 January 2014 and informed the complainant that it considered his request to be vexatious.
26. It stated that over the past year the council had dealt with over 20 requests for information, all of which have focused entirely on the PRU. It explained that it believed that the incident involving his son had now been fully addressed, and as it occurred over 2 years ago, it believed this request represented unreasonably persistent behaviour. It also stated that as his son was no longer at the PRU, and the PRU has changed as a result of the allegations and investigations, it could see no public interest being served by the request.
27. It also informed the complainant that in its letter of 26 November 2013, it had asked the complainant to provide a list of all the information that he wanted. As a result, a list of questions was submitted and the answers provided. It explained that this was an attempt to draw a line under the case. However, despite doing so, further requests have been submitted. The council explained that it considered this pattern of requests to have created an unjustified burden on the council. It specifically pointed to his behaviour resulting in the recent harassment notice as an example of a personal grudge against specific members of staff.
28. Finally, it informed the complainant that as a result of his recent behaviour towards his SPOC from the education services, the council was changing his SPOC for all PRU matters to an officer in the information management team.

29. The complainant requested an internal review of this response and on 10 March 2014, the council overturned the application of section 14 to the request. On review it considered that whilst the requests were related to the PRU, the specific information had not been requested before, and would be readily available and so not burdensome on the council. The review did however advise that the persistence of the requests could well cross the threshold beyond which they could be classed as vexatious.
30. The council has explained that it considers the change in the SPOC to be the beginning of the third stage in this case. It has advised that the frequency of the contact from the complainant remained high, but was now mainly directed to the information management team. However he continued call other service areas seeking to overturn decisions even though he had been told to direct all contact through the new SPOC.
31. The new SPOC has recorded that he received 152 emails from the complainant from 6 December 2013 to 30 March 2015. The SPOC states that this equates to an email almost every other working day. He also explained that he had established a scheduled phone call with the complainant one day a week in order to manage his contact. However, despite such calls often lasting in excess of 30 minutes, there were many additional calls outside this time. The SPOC informed the Commissioner that the contact he has highlighted is in addition to the contact emails and telephone calls directly relating to information requests, internal reviews and ICO complaints.
32. During the third stage, January 2014 to date, the council has received 15 requests for information from the complainant. This is despite him being advised in March 2014 that although the council had decided that his requests at that time had not tipped the balance to vexatious, there was a likelihood that persistent requests of that nature could do so in the future. These subsequent requests continued to focus predominately on the PRU, with two requests regarding FOI and DPA response times.
33. The council has informed the Commissioner that during this time frame, the language used by the complainant continued to have a threatening and vexatious tone on occasion. For example, an email to the old and new SPOC and another senior officer on 7 August 2014 stated:

*"it seams there is only me that can se this are you's blind or is it just selective ha ha you's make me laugh I can't wait to get you's to court and let a judge se all this and the paper's you's make your selfs look like the incompetent idiots you's aregood look your going to need it."*  
[sic]



34. A further email to both the new and old SPOC and two other senior officers on 4 September 2014 contained the following language:

*"I hope the 8 members of the dcc staff get everything they deserve and more I am a firm believer of an eye for an eye"*

*"I don't know how they can go to work and look people in the eye knowing what they have hidden behind one another You are all hypocrites and have no morals" [sic]*

"JOB FIRST

CHILDREN SECOND

SHAME ON YOU"

35. The council has stated that it considers the two requests in this case crossed the threshold to vexatious as it feels that the complainant has now exhausted all reasonable lines of enquiry in relation to the PRU. It explained that prior to the requests in this case, the complainant had confirmed that he would make one final request to the council. However, he then made a new request on areas where responses had been provided in the past. The council considers that these requests represent a continuation of a pattern of persistent refinement into details that have either been refused in previous request under grounds such as personal data (see previous decision notice FS50490413 and related Tribunal case) or have moved beyond a public interest to a personal interest. It cites the request for further detail about staff statements to be for information which has previously been withheld and upheld by the Commissioner and the Tribunal. In relation to the increased personal interest, the council has said that it considers the request for pupil numbers on different dates to be beyond the public interest as it is a culmination of a long process of requests which has drilled down to greater levels of detail at each stage. It argues that this level of detail is not in the public interest.
36. The council has also explained that it considers that it has done all it reasonably can to accommodate the complainant over the years in relation to this subject matter. It has responded to each request, although it acknowledges and apologises that a small number of these have been responded to late. It has advised that at various points it has tried to pull together the requests and draw a line under matters as demonstrated by letters sent on 26 November 2013 and 20 January 2014. It explains that each time it has tried to get the complainant to identify outstanding information and provided this information, it is met instead with more questions on the details. It considers that these requests for ever more detail such as staff and pupil numbers on certain

dates is no longer in the public interest and is representative of a pattern of each request leading to another then another.

37. Outside of the FOI remit, the council has explained that it has tried to provide the complainant with advice and assistance with regard to the PRU investigation. During the course of the investigation, it endeavoured to keep him updated and has provided the Commissioner with a number of letters sent to him in 2012 whilst the investigation was ongoing which advise him about the progress of matters. In addition to this, the complainant has raised questions about the PRU at Full Council meetings on two occasions on 23 July 2014 and 3 December 2014 and has received responses to both of these.
38. The council has informed the Commissioner that in January 2015, it issued a formal apology to the complainant and his son regarding what happened at the PRU. It has informed the Commissioner that it is hopeful that this action will draw a line under the matter and that both parties will be able to move on.
39. The council has summarised that the complainant's initial allegation against the PRU in early 2012 has been subject to a Police investigation, a council investigation, disciplinary procedures, questions to and answers from full council, and finally, a formal apology which was provided in January 2015. All of which it considers represent efforts to reasonably assist the complainant over the last 2 and half years with regard to his concerns about the PRU. However, despite this, the complainant has continued to engage with the council on the PRU, both in formal FOI requests, and in persistent contact with the responsible service areas.

### **Complainant's position**

40. The complainant has informed the Commissioner that he does not accept that he or his requests are vexatious. He has explained that he does not consider that his requests are personal in nature and feels that the council has treated him in such a way as to inflate the number of FOI requests.
41. He has explained that he has chosen not to take his allegation and story to the local papers and considers that had he done so, there would be a stronger public interest in the information he is requesting. He has said that he has looked at the [whatdotheyknow.com](http://whatdotheyknow.com) website and seen that the council has received a greater number of requests from other individuals and these have not been refused as vexatious. He therefore does not understand why his requests have been refused as such. He said that the council was not able to explain the reason for this.

42. He also maintains that since his SPOC changed to an officer in the information management team, more of his correspondence has been classed as formal information requests than before. He feels that previously, his questions were more often being dealt with as normal course of business. Consequently, he believes that the number of formal requests for information is inflated.
43. The complainant has also told the Commissioner that there is a serious purpose for requesting the information at this stage because on 17 February 2015 his solicitors submitted a pre-action letter to the council in respect of a claim for breach of duty of care to his child in relation to the allegation and investigation into the PRU.
44. He has explained that his allegation against the PRU was serious and he is not happy that the council has not provided him with full access to the investigation report, disciplinary outcomes and supporting information.
45. He therefore continues to request information in order to get to the bottom of what went on at the PRU and also in connection with his claim against the council. In the Tribunal hearing for FS50490413, the Tribunal commented that the complainant's counsel had stated that the complainant's *"self-avowed purpose in securing disclosure was to obtain information that might assist him in a civil claim against anyone found to have behaved improperly"*<sup>4</sup>.
46. The complainant has also informed the Commissioner that he has not made any further requests to the council since the requests considered here.
47. With regard to the threatening messages and harassment issue in October 2013, the complainant has apologised during the FS50490413 Tribunal hearing for his actions and has explained to the Commissioner that they were born out of his frustration with the situation. Although the Tribunal dismissed his appeal, agreeing with the Commissioner that the investigation report was correctly withheld, the complainant continues to wish to see the information contained therein and any other information he deems to be associated with the PRU and his claim against the council.

---

<sup>4</sup> EA/2013/0168 paragraph 26

## **The Commissioner's conclusion**

48. The Commissioner is sympathetic to the complainant's position and his desire to access information in relation to this allegation about the PRU and the subsequent investigations and disciplinary procedures. It is clear that his position is that he has a very serious purpose in making the requests as he feels that he has not been provided with full disclosure in relation to the investigation into the PRU. He also maintains that the council has not handled the situation well and he and his son have not been treated fairly. The Commissioner recognises the vested personal interest the complainant has in the incident which involved his son, and therefore any and all information related to it. He also finds that it is understandable that the complainant retains strong feelings about the matter as he feels that his son has been disadvantaged.
49. However, it can be seen from the evidence presented that the complainant's behaviour can certainly be characterised as persistent. At times the tone of his contact with the council can also be characterised as threatening or menacing and could constitute a personal grudge against certain members of staff, particularly those with direct association with the PRU.
50. The Commissioner acknowledges that the personal and threatening tone of requests and interactions with the council has decreased in more recent times, with such behaviour peaking between October 2013 and September 2014, much of which came after the initial vexatious refusal of November 2013. However, it is clear that the persistent behaviour has continued and is very much a defining character of the complainant's interactions with the council. The Commissioner notes that there is a pattern of each request and response leading to further requests for more detail, and it is not clear to the Commissioner how information of the level of detail requested in the current requests will further the complainant's aims.
51. In addition to the persistent nature of the requests, the Commissioner notes that the complainant's general contact with the council has been, and continues to be, excessive. The amount of time the council has given to the complainant in terms of telephone and email contact, as well as answering requests, is great. Given that years have now passed since the initial PRU incident and allegation, such contact has now taken on a disproportionate quality.
52. The council has taken many steps to draw a line under the matter. It has twice given the complainant the opportunity to have questions related to the PRU answered at full council meetings. It has on more than one occasion invited the complainant to submit a final list of questions that he wants answers to. It has also now issued a formal

apology. Despite steps such as these, the complainant has continued to make requests related to the PRU, each one seeming to drill down into ever more detail.

53. The Commissioner does find that there is a public interest in the requested information to a limited degree. It is clear that information about the incident at the PRU and the council's subsequent handling of the matter is in the public interest as there is a need for transparency in how the council handles such serious incidents. It has been acknowledged that there were serious failings and steps have now been taken which have changed the PRU. The Commissioner considers that the time that has passed and the actions taken by the council since the incident have had the effect of reducing the public interest in the matter.
54. He understands the complainant's position that there is a lack of public interest only because he has chosen not to take his case to the local media. However, the Commissioner does not support this view as he finds that the public interest in a freedom of information sense should not be confused with what interests the public in local newspapers. It is unlikely that the public interest considerations would change dramatically if there had been local media coverage of the incident.
55. The Commissioner sees that the council has tried for over two years now to manage the complainant's behaviour and to limit the number of information requests. However, despite all the steps taken by the council, the complainant continues to make requests for information which are now seem to be solely serving a personal aim of supporting his claim against the council.

Following on from the council's warning letter of 26 November 2013, it is clear to the Commissioner that the requests and associated behaviour have now crossed the threshold into vexatious. He therefore finds that that council was correct to refuse the requests of 23 and 26 November 2014 as vexatious.

## Right of appeal

---

56. 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: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

57. 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.
58. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**