

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2021

Public Authority: The Governing Body of Monkshouse Primary School

Address: Pennygate
Spalding
Lincs
PE11 1LG

Decision (including any steps ordered)

1. The complainant requested a variety of information regarding health and safety, with particular emphasis on an incident he alleges took place in 2016. Monkshouse Primary School ("the School") refused the requests as vexatious.
2. The Commissioner's decision is that the requests were vexatious and the School was therefore entitled to rely on section 14(1) of the FOIA to refuse them. However, as the School failed to respond to Request 1 within 20 working days, it breached section 17(5) of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Request and response

Request 1

4. On 14 May 2020, as part of wider correspondence that he was engaged in with the School, the complainant also requested information of the following description:

"[1] All and any evidence of the incident on 27 June 2016 being reported to the CDM Advisor, and separately, all and any evidence of the incident on 27 June 2016 being reported to Lincolnshire County Council.

"[2] All and any evidence of the information requested by the Headteacher after completion of the project – and whether the information requested contained references to the incident on 27 June 2016.

"[3] All and any evidence of written procedures and risk assessments put in place to facilitate any movement of equipment around the site – being restricted to when children were in class."

5. On 23 June 2020, the School responded. It refused the request and relied on section 14(1) of the FOIA (vexatious request) and section 14(2) of the FOIA (repeated request) to do so. It also informed the complainant that it would not respond to further requests on the topic.
6. The complainant requested an internal review on 29 June 2020. The School responded to this correspondence on 21 September 2020. It refused to complete an internal review as it did not have a review procedure.

Request 2

7. On 21 September 2020, the complainant then made a further request for the following information:

"The risk assessment for the building work Mouchel project number: 1064978."

8. On 24 September 2020, the School responded. It stated that it did not hold the requested information. The complainant appears to have queried this response on the same day.

Request 3

9. On 1 October 2020, the complainant contacted the School again and made a further request for the following information:

"All and any recorded information regarding the risk assessments for the building work."

10. The School responded on 2 October 2020 to both this request and the complainant's follow-up correspondence in respect of request 2. It referred back to its previous responses – particularly its response to request 1.

Scope of the case

11. The complainant contacted the Commissioner on 7 October 2020 to complain about the way his requests for information had been handled.
12. The Commissioner considers that the scope of her investigation is to determine whether the requests were vexatious

Reasons for decision

Section 14 - Vexatious

13. 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.*

14. 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.

15. 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.
16. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. *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).

18. 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.
19. 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*".
20. 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.
21. 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 complainant's position

22. The Commissioner invited the complainant to make a submission as to why his request was not vexatious – although she noted that the burden of proof lay with the School. Although he was under no obligation to do so, the complainant did provide a submission setting out why he believed that the information was important.
23. The complainant noted that he had been employed by the School in 2016 when building work was being carried out on the site. A junior colleague had informed him of a "near miss" incident involving four children in the playground when vehicles were moving around the same playground ("the Incident"). The complainant stated that he had

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

reported this incident formally in June 2016 and wanted to establish what steps the School had taken to investigate the Incident.

24. According to other information he had received from School, the complainant explained, the Incident did not appear to have been logged and he wished to establish why this was the case.
25. In 2018, the complainant explained that he had logged a safeguarding complaint. In 2020, having made a SAR to the School for the 2018 paperwork, references to the Incident had been annotated by the School with the words "Not mentioned." The complainant took that to mean that the School was claiming he had not mentioned the Incident in 2016 – when he was adamant that he had done so.
26. The Commissioner noted that, according to the description of the Incident that the complainant had provided, no child appeared to have been injured and that, given the time that had elapsed since the date of the Incident, it wasn't clear what contemporary relevance or wider public interest the information would have. The complainant responded to that point by saying:

"I respectfully suggest that your definition of minor injuries is unclear. I suggest the impact of the incident was extremely frightening for the children, not least because of their ages. In addition, children and adults were physically exposed to dust and fumes as a consequence of the movement of works vehicles on the playground during school time. A witness account, dated 29 July 2016 states 'There are works vehicles entering and leaving the school to gain access to the building works. These vehicles have to drive across the playground to gain access to the building works and are only meant to enter and leave the school when the children are in class however they have been driving through when the children are out of their classes and in the playground'. Given this account, I suggest it is unclear how the health and well-being of adults and children could not have been affected. Whilst a teacher at the School, witnessing construction vehicles being moved on the playground when children were on the playground was very distressing. Learning that four children in my class had been involved in a reported near-miss with a moving vehicle on the school playground was devastating. The School's apparent decision not to investigate the matters following my complaint at the investigatory interview on 29 June 2016 is unclear given that my complaint was in relation to the health and safety of pupils and staff. I suggest it is unclear why the School and the local authority would not want to thoroughly investigate the matters raised given that the incidents involved breaches of health and safety..."

"...I suggest the request for information is relevant as it concerns the safeguarding of children at a time when extensive building work was taking place at the School. The information requested relates to how four children were involved in a near miss with a moving vehicle on the playground. The site plan, dated December 2014 stipulates that no vehicular movements were permitted across the playground between 08:30-15:45. Given how construction work is common in many schools, I suggest my request is relevant to events today and is of wider public value as it relates to compliance with health and safety at work regulations and statutory Health and Safety Executive stipulations on health and safety in schools and the responsibility on schools to comply with those stipulations including when building work is in progress. I suggest the health and safety procedures for the building work are unclear given the stipulations in the email from the senior project manager, dated 09 October 2018. I suggest the health and safety procedures for the building work are also unclear from the risk assessment/designer's management schedule, dated 01 June 2015."

27. He concluded by saying:

"Given that my information requests were made to a public institution (the School), I hope I have been able to answer your points explaining why this information is still relevant to events today and why it has wider public value."

"I suggest that there is nothing which could be described as vexatious, disruptive, not serving a serious purpose or taking on the characteristics of a personal grudge in relation to my information requests to the School."

The School's position

28. The School also provided a submission to the Commissioner which presented a different version of events. The School stopped short of saying categorically that the Incident did not happen, but it noted that it had no records showing that the Incident had been reported in 2016 and therefore no records detailing any subsequent action. It explained that it had repeatedly informed the complainant that this was the case. The School claimed that it had only become aware of the Incident when the complainant filed his safeguarding complaint in 2018.

29. The School noted that it had been in regular correspondence with the complainant since October 2018 and had received 16 pieces of

correspondence prior to the date of the first request – including eight pieces of correspondence in the six months leading up to the first request. A further 13 items of correspondence (excluding Request 2) were received after Request 1 was submitted, but before Request 3 was submitted. The School provided the Commissioner with a schedule of correspondence, showing the frequency with which it was receiving items from the complainant. The earlier items had all received responses, but since the first request, the School had decided that it would no longer engage with the complainant on this issue.

30. The volume of correspondence was, the School argued, placing it – and particular the small number of staff tasked with responding – under a considerable burden, at a time when it was struggling to cope with the burden of the pandemic. Some of the requests were overlapping and new correspondence would arrive before the previous correspondence had been dealt with.
31. In the School's view, the request did stem from a broader grudge that the complainant had. It explained that another incident involving the complainant had taken place and that, in its view, he appeared to be holding the School partly responsible for subsequent events.² It was this secondary grievance and the complainant's belief that issues remained unresolved, in the School's view, that was the motivation for the requests.
32. In summary, the School argued that it had provided what information it could to the complainant, but that he refused to accept the School's position. The School argued that the complainant was now using FOIA requests as means with which to harass and annoy the School.

The Commissioner's view

33. In the Commissioner's view, all three requests were vexatious.
34. At first glance, there does appear to be some value to the requests. The health and the safety of children (particularly younger children) when they are at school is and should be, very important.
35. However, what may have begun as a well-intentioned enquiry has now drifted up to and beyond the point of vexatiousness. The value of the

² The School did provide the Commissioner with further details of this incident. As the precise details themselves have little bearing on her decision, but would risk identifying the complainant and thus be unfair to him, the Commissioner has not included them in this notice.

information has been eroded by time and no longer justifies the amount of resources being expended on responding to the complainant.

36. According to the description of the event provided by the complainant, no child was hurt during the Incident – although he has subsequently argued that some of the children may have been frightened by the Incident. The Commissioner can accept that such an event might have been frightening at the time, but the complainant has not put forward any evidence to suggest that it would have caused any lasting damage and she is sceptical that there would have been significant enduring effects on any of the children involved.
37. The Commissioner is also conscious that the Incident would have taken place over four years prior to the first request being made. The particular construction work seems to have long since concluded. It seems unlikely to the Commissioner that the same construction work would be repeated in the immediate future and therefore any procedures that were in place at the time of the Incident would be of limited relevance even if further construction work were to take place at the School.
38. Whilst the Commissioner notes the complainant's argument that construction work is common in schools, she also notes that each school site is unique and therefore the procedures required will need to be tailored to the unique nature of the site. Even where construction takes place at the same site, the health and safety procedures will usually vary depending on the precise part of the site where construction work is taking place. The Commissioner is therefore not persuaded that further details about the Incident (even if the School had any) or the School's procedures at the time would be of significant public value some four years later.
39. In addition, the School noted that the complainant had submitted complaints via the School's own internal procedures, to Ofsted and to the Council. None of these complaints had been upheld. It also noted that Ofsted had found its safeguarding procedures to be "effective".
40. The Commissioner also considers that the volume of the complainant's correspondence with the School has become excessive. Between 1 November 2019 and 1 October 2020, the complainant appears to have sent no fewer than 21 items of correspondence (not including the three requests which are the subject of this notice) – which strikes the Commissioner as wholly disproportionate to the matters involved.
41. Furthermore, the Commissioner notes, from the documents that she has seen, that the complainant's correspondence is lengthy, with multiple points to be considered. When he is provided with a reply, he responds

with an almost line by line rebuttal – few, if any, points are conceded and he continues to rake over old ground: namely the Incident and events surrounding it.

42. The Commissioner recognises that, even in normal times, a primary school is a relatively small public authority with limited resources. She also recognises that, at the time the request was submitted, the School would have been dealing with the considerable burden imposed upon it by the pandemic. The burden of responding to the complainant's correspondence would have caused an unjustified and unnecessary disruption to the running of the School. The effect of such a burden would be that the School would feel harassed – even if that was not the complainant's intent.
43. It is evident from the correspondence that, even if the School were to respond to the requests, little would actually be resolved and it would only serve to prolong the correspondence – correspondence that has gone on for far longer than is justified by the events concerned.
44. It appears to the Commissioner that it is particularly important to the complainant that his account of events in June 2016 be corroborated and vindicated. However, the ongoing dispute between the complainant and the School serves no wider public interest. The persistent use of the FOIA to pursue such a grievance has reached the point where it now constitutes an abuse of the process. The complainant is using FOIA requests as a means to re-visit, re-open and re-argue matters that have been comprehensively dealt with elsewhere.
45. The Commissioner is therefore satisfied that the requests were vexatious and therefore the School was entitled to rely on section 14(1) of the FOIA to refuse them.

Procedural Matters

46. When a public authority wishes to refuse a request as vexatious, section 17(5) of the FOIA still requires it to issue a refusal notice, informing the requestor that their request has been refused as vexatious, within 20 working days.
47. From the evidence presented to the Commissioner, the School did not inform the complainant that Request 1 had been refused as vexatious within 20 working days (or even 20 school days). The School therefore breached section 17(5) of the FOIA in responding to the request.

Other matters

Internal Reviews

48. When the complainant sought an internal review of the way Request 1 had been handled, the School refused to carry out an internal review as it stated that it did not have a suitable procedure in place. The Commissioner would recommend that the School produces one.
49. Paragraph 5.1 of the FOIA Code of Practice states that it is best practice for a public authority to:
- "have a procedure in place for dealing with disputes about its handling of requests for information."*³
50. The Commissioner also notes that it is a statutory requirement under the EIR for a public authority to carry out an internal review (reconsideration), if so requested, for requests dealt with under the EIR.
51. Paragraph 5.9 of the Code states that:
- "It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision. The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant."*
52. The Commissioner also considers that, where possible, an internal review should be carried out by someone more senior than the person who dealt with the original request – although she accepts that this is not always possible for a small public authority.
53. The Commissioner recognises that an internal review may not have changed the outcome in this particular case, but she would still encourage the School to put some form of internal review procedure in place for future requests. A thorough internal review can save resources in the long run by avoiding unnecessary complaints to the Commissioner.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

54. 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

55. 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.
56. 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

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