

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2022

Public Authority: The Governing Body of Hazeldene School
Address: Stancliffe Road
Bedford
MK41 9AT

Decision (including any steps ordered)

1. In two requests, the complainant has requested information about a member of staff, policies and the location of a particular individual. Hazeldene School ('the School') considered the requests to be vexatious and refused to comply with them.
2. The Commissioner's decision is as follows:
 - The complainant's requests of 20 November 2021 are vexatious requests under section 14(1) of FOIA and the School is not obliged to comply with them.
3. The Commissioner does not require the School to take any corrective steps.

Request and response

4. On 20 November 2021 the complainant submitted two requests to the School in the following terms:

'Email 2'

"I request information on the name and position of your officer who is sending emails, which are not signed off, from your official and publicly available email account (office@hazeldeneschool.co.uk)."

'Email 3'

"On 21 April 2021, I have received the next message from Hazeldene School, although that time I did not request any information from your organisation:

"I can clarify that [name redacted] is currently not out of the country. Yesterday she had to attend meetings out of county not out of the country."

Therefore, I request further information from your organisation:

1. Policies and procedures which your officers follow when clarifying and confirming whereabouts of officers from other organisations
2. All information which your organisation hold to be able to confirm that the officer from the other organisation was "out of county not out of the country"
3. All information about meetings which the officer from the other organisation attended "out of county" on 20 April 2021"
5. On 23 November 2021 the School responded. In its response it referred to the above requests ('Email 2' and Email 3') and one other email the complainant had submitted - 'Email 1'. Email 1 appeared to have concerned a complaint about a subject access request the complainant had submitted to the School under the data protection legislation.
6. The School refused to comply with the Email 2 and Email 3 requests and indicated that it considered that the requests could be categorised as vexatious.
7. The complainant requested an internal review on 23 November 2021. The School refused to correspond with them further and directed them to the Commissioner. Correspondence continued and on 24 November 2021 the School advised the complainant that it is treating all their correspondence as vexatious.

Scope of the case

8. The complainant contacted the Commissioner on 24 November 2021 to complain about the way their requests for information had been handled.
9. The Commissioner's investigation has focussed on whether the School is entitled to refuse to comply with the complainant's 'Email 2' and 'Email 3' requests of 20 November 2021 under section 14(1) of FOIA.

Reasons for decision

10. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
11. Considering what makes a request a vexatious request in **Information Commissioner vs Devon County Council & Dransfield [2012]**, the Upper Tribunal discussed four broad themes:
 - 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).
12. However, the Upper Tribunal emphasised that:

“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.”
13. In his published guidance on section 14(1)¹ the Commissioner notes that these themes provide a useful structure to start analysing whether a request is vexatious. However, he advises that a public authority should keep in mind that it needs to adopt a holistic approach. The authority may identify other factors which are relevant to its circumstances, and it should make sure it considers those as well.
14. In its submission to the Commissioner the School has first provided a background and context to the request. Given its sensitivity, he does not intend to reproduce it in this notice.
15. The School has gone on to say that from 16 July 2021 to 24 November 2021 it received 29 emails from the complainant requesting specific information relating to their private concern. The School's responses to this correspondence generated further emails in which the complainant objected to the School's approach and complained that it was not providing the specific information they had requested.
16. The School has gone on to discuss the four themes noted at paragraph 11. It says that, with regard to burden, its staff were receiving emails

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

and calls from the complainant - requesting information, reminders and chasers. The complainant would also cite complaints and internal reviews before the School had fully dealt with the initial response(s). The School says it does not have many staff purely in support roles and taking staff out of their day to day duties to respond to emails means that they are not teaching and supporting students.

17. Turning next to motive, the School has advised the Commissioner what it considers the complainant's underlying motive to be. The Commissioner has noted the School's view but does not intend to discuss it in this notice.
18. Regarding the value or purpose of the request, the School says it considers that there is little direct value to the requests from a public interest perspective. The information in which the complainant is primarily focussed is of interest only to themselves. In addition, the School says the complainant has persistently attempted to obtain information that it has explained to them that it cannot provide. (The School has explained to the Commissioner why it cannot provide that information.)
19. Finally, harassment or distress to or of staff. The School has given the Commissioner an indication of the toll the substantive matter that is the complainant's concern has had on its staff. Dealing with the complainant's correspondence has exacerbated that situation. In addition the School has indicated that the complainant has used bullying behaviours to try and elicit the response they are seeking, and that the tenor of their emails has become unpleasant when they were unhappy with the School's responses.
20. The School has explained that it is not particularly categorising a single item of correspondence from the complainant as vexatious; it is more that their approach regarding the underlying matter is single minded. The complainant is unwilling, the School says, to view its responses as complete or as compliant with the law. They continuously emailed the School's office, its head teacher and a member of staff with the same requests and will not accept that the School cannot answer the question that the complainant wants them to answer.

The Commissioner's conclusion

21. The Commissioner understands that the complainant's focus is specific information that the School has advised them that it cannot provide. From the wider circumstances described to him, although he has not formally considered that matter in this notice, the Commissioner considers that the School is likely to be entitled to withhold that information.

22. However, at the point of the two requests in this case, the subject of the information being requested had drifted from the substantive matter to more trivial matters. The Commissioner has the impression of an applicant who has a specific concern that is of interest to them (but has little or no wider public interest), who has become frustrated that they cannot access from the School information related to that concern and who has resorted to bombarding the School with requests that have little or no serious purpose or value – either to the complainant or the wider public. The purpose of such an approach – which is known only to the complainant – may have been to wear down the School.
23. The Commissioner is satisfied, first, that the burden to the School of complying with the requests of 20 November 2021 is disproportionate to the minimal value the requests have, which is one of the criteria for vexatiousness. Second, and taking the wider history into account, the Commissioner considers that the effect of the complainant's requests is to harass School staff – given their volume over a relatively brief period, the persistence of previous requests and the disparate information being requested at November 2021, and the tone that the School has advised the complainant has adopted in some of their emails.
24. FOIA was not introduced to enable members of the public to cause an undue burden to public authorities or to harass public authority officers. As such, the Commissioner's decision is that the School was entitled to rely on section 14(1) of FOIA to refuse to comply with the requests of 20 November 2021 as the requests, by that point, could be categorised as vexatious.
25. By way of a reminder to the School, a public authority cannot simply refuse to consider any further requests for recorded information that an applicant may submit. However, under section 17(6) of FOIA, a public authority that has issued an applicant with a section 14(1) refusal notice – which the School effectively did on 24 November 2021 – is not obliged to issue a further section 14(1) refusal if they receive more requests from the applicant **on the same matter** or **that evidence the themes noted at paragraph 11 of this notice**.

Right of appeal

26. 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

27. 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.
28. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF