

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2022

Public Authority: The Governing Body of Laurelhill Community College

Address: 22 Laurel Hill Road
Lisburn
County Antrim
BT28 2UH

Decision (including any steps ordered)

1. The complainant has requested Board of Governors meeting minutes and correspondence. The position of Laurelhill Community College ('the College') was that it had disclosed all the relevant information it holds, which the complainant disputed. The College has subsequently revised its position and considers that the request is a vexatious request under section 14(1) of FOIA.
2. The Commissioner's decision is as follows:
 - On the basis of the evidence the College has presented to him, the Commissioner has not been persuaded that the request is vexatious and therefore finds that section 14(1) is not engaged.
3. The Commissioner requires the College to take the following step to ensure compliance with the legislation:
 - Provide the complainant with a fresh response to their request that complies with FOIA, and which does not rely on section 14(1).
4. The College must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 May 2021 the complainant requested information of the following description:

"I understand that you hold data and information about board meetings as is required by the Guidance on Governance for Controlled Schools. Therefore I am requesting all data and information held by Laurelhill Community College and the Board of Governors for Laurelhill Community College for matters stated below be provided to me.

- Board of Governors' meeting dates and times, listed agendas, names of governors in attendance, notes / minutes of meetings and any other information and data connected to this

- Correspondence and communication of all kinds about myself and on behalf of myself with any and all Boards of Governors and school staff

- Correspondence and communication of all kinds about my [redacted] and on behalf of my [redacted] with any and all Boards of Governors and school staff

I envisage that a number of individuals may process this data in connection with the above. Some of the data processed will be held in the form of sent and received emails and word-processed documents. Presumably these can be identified through the use of search tools

In relation to the above mention subject matters I am requesting the above information and data held from 1st March 2020 up to the present date, including any information and data created and exchanged between the date of this letter 10th May 2021 and the date this request has been fulfilled. This should included any known planned meeting dates, times and agendas up to the end of this academic 2020/2021 year.

Once you have identified the above information and data within the scope of this request, please provide all copies to me. When doing so, provide a description of the data and the categories of personal data concerned.

Explain the purposes for which the data is processed.

Identify the source or sources of the data.

Set out to whom the data has been disclosed or may be disclosed, in particular recipients in third countries or international organisations.

Set out, where possible, the envisaged period for which the data will be stored, or, if not possible, the criteria used to determine that period.

State whether there has been any automated decision-making using the data, including profiling, and if so, any meaningful information about how it was based, as well as the significance and the envisaged consequences for me of such processing.”

6. On 22 June 2021 the College responded. It appears to advise that there was no further information it could provide in addition to the information it had provided in response to a subject access request the complainant had submitted previously. However the College disclosed some meeting minutes, with personal data redacted.
7. The complainant requested an internal review on 3 July 2021.
8. Following intervention by the Commissioner, the College provided an internal review on 8 February 2022. The College said it had received the request on 13 April 2021 and provided a response on 28 April 2021. This pre-dates the date the Commissioner has for the FOIA request, which is 10 May 2021. The College may have been referring to the complainant's subject access request, which is a provision of the separate, data protection legislation.
9. In its internal review, the College noted the further information it had disclosed in June 2021 and upheld its original response.
10. The Commissioner notes that some of the requested information is the complainant's own personal data. As such, it would be exempt from disclosure under section 40(1) of FOIA and, if it has not already done so, the Commissioner would expect the College to handle that particular information under the data protection legislation.

Scope of the case

11. The complainant contacted the Commissioner on 17 June 2021 to complain about the way their request for information had been handled.
12. On 28 April 2022 the Commissioner had a telephone conversation with the College. The College discussed the matter of information it held and did not hold but also indicated that it considered section 14(1) of FOIA **might** be more appropriate. (It is not uncommon for a public authority to reconsider its response to a request as a result of a complaint to the Commissioner.)

13. The Commissioner followed up this phone call with an email to the College the same day. He first confirmed that the focus of the complaint still appeared to be whether the College held any further information relevant to the request. However, in view of their conversation, the Commissioner also directed the College to his published guidance on section 14(1), to the published questions he would expect a public authority to address in a submission to him if it were relying on section 14(1) and examples of other decisions he had made which involved education institutions and in which he had found those institutions were entitled to rely on section 14(1).
14. The Commissioner also advised the College to communicate any new position to the complainant.
15. Having received the College's submission, the Commissioner's investigation has focussed on the College's new position, which is that the request is vexatious under section 14(1) of FOIA.

Reasons for decision

16. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
17. 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).
18. 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."
19. In his published guidance on section 14(1)¹ the Commissioner notes that these themes provide a useful structure to start analysing whether a

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

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.

20. As discussed, the Commissioner directed the College to his published guidance on section 14(1); the questions he would expect a public authority relying on section 14(1) to address in a submission; and examples of decisions in which he had found that schools were entitled to rely on section 14(1). These examples showed the level of detail and information a public authority is likely to need to provide in order to make a compelling case that section 14(1) is engaged.
21. The submission the Commissioner received from the College is reproduced below:
 - **Vexatious:** The complainant's issues should be dealt with through the College's Complaints Procedure and/or a "DARS process".
 - **Burden of work:** The College had spent 10-14 hours since Easter dealing with "requests for ICO" and cannot afford more time at present.
 - **Motive:** The complainant has expressed their lack of confidence in the Head Teacher but that if terms of reference could be agreed, this could be addressed in a dispute and reconciliation meeting.
 - **Harassment or distress:** A number of College staff have evaluated, that in their opinion, the amount of correspondence 'is harassment'. The College considers that the complainant is taking an unreasonable entrenched position instead of fully engaging with the Head Teacher and the College through the Complaints' Procedure and/or a DARS process.
 - **Context:** The College cannot see the connection between the current requests and the information provided by the College in relation to the education of the requester's child.
22. In its use of the five headings, it is clear that the College **has** reviewed the Commissioner's guidance. However, he finds its submission to be inadequate.
23. The Commissioner does not doubt that, like many public authorities and other organisations at this time, the College is likely to be facing considerable pressures and that its resources are likely to be stretched. In these circumstances, he appreciates that dealing with the complainant's correspondence may be frustrating for the College. The Commissioner tends to agree too that the College's complainants procedure and/or a dispute and reconciliation meeting is likely to be a

more efficient and effective route through which to address the complainant's substantive concerns, rather than pursuing these through the FOIA legislation.

24. However, the complainant has submitted a request to the College that has resulted in this FOIA complaint to the Commissioner. As far as he is aware it is the first FOIA complaint that the complainant has brought to him and so is the first request submitted by complainant that he has considered. As such, on the evidence the College has provided to him he cannot find section 14(1) is engaged on this occasion. As in the examples the Commissioner directed the College to, he would have expected the College to provide detail on, for example and where relevant: the volume of related previous correspondence it had received from the complainant; the length of time it has been corresponding with the complainant; the tone of their correspondence; the frequency of the correspondence; whether one request has led to another request and then another request and so on; and/or whether the complainant is seeking to keep 'live' a matter that has been concluded. No such detail has been provided.
25. The Commissioner had directed the College to appropriate, relevant guidance to help it form a view on whether the request was, in fact, vexatious and to help it make a case to support any reliance on section 14(1). The College may consider that it does not have time to fully engage in this FOIA complaint. However, not providing a sufficiently detailed or persuasive submission has now led to additional work for the College and perhaps, in time, additional work for the Commissioner. Both could have been avoided.
26. The Commissioner will conclude by observing that he considers complaints brought to him on a case by case basis. He has found that section 14(1) is not engaged on this occasion but that does not mean he would find it was not engaged if the complainant were to bring a similar complaint to him in the future.

Right of appeal

27. 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

28. 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.
29. 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