

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2016

Public Authority: E-ACT
Address: 3rd Floor
10 Whitfield Street
London
W1T 2RE

Decision (including any steps ordered)

1. The complainant has requested from E-ACT information regarding pupils that attended Oldham Academy North (the 'Academy') and information concerning members of staff at the Academy.
2. During the investigation E-ACT applied section 40, section 44 and section 14 of the FOIA to the requests.
3. The Commissioner's decision is that E-ACT is entitled to rely on section 14(1) of the FOIA to refuse the requests. He does not require the public authority to take any further steps.

Request and response

4. On 17 April 2015 the complainant wrote to the E-ACT and requested information in the following terms:

"Under the Freedom of Information Act 2000 I seek the following information about Oldham Academy North

1. *Disclose the number of pupils that have attended the academy in 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015 and a breakdown of the number of pupils in each year*
2. *Disclose the number of staff at the academy in 2010*

3. Disclose the number of staff that have left the academy since its inception and the reasons why they have left. E.g.) redundancy, resignation, dismissal

4. Disclose the number of staff that have been disciplined since the inception of the academy and the reasons behind of the disciplines

5. Disclose the number of staff that have been suspended since the inception of the academy and the reasons behind the suspensions

6. Please disclose the details of the criminal records or convictions listed on CRB checks of the members of staff at Oldham Academy North who have criminal records or convictions i.e. what they have been convicted of

7. Disclose the number of ethnic minority staff at the academy and the number of ethnic minority staff who are part of the senior management"

5. E-ACT responded on 20 April 2015. It estimated that it would cost more than the 'appropriate limit' to consider the request and cited section 12 of the FOIA. It advised the complainant to narrow the scope of his requests.

6. On 20 April 2015 the complainant narrowed the scope of his request in the following terms:

"Thank you for your email of the 20th April 2015

Upon reading the advice on the refusal notice that was served I have narrowed the scope of my original freedom of information request of 17th April 2015

Under the Freedom of Information Act 2000 I seek the following information about Oldham Academy North

1. Disclose the number of pupils that have attended the academy in 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015 and a breakdown of the number of pupils in each year

2. Please disclose the details of the criminal records or convictions listed on CRB checks of the members of staff at Oldham Academy North who have criminal records or convictions. i.e. what they have been convicted of

3. Disclose the number of ethnic minority staff at the academy and the number of ethnic minority staff who are part of the senior management"

7. On 21 May 2015 E-ACT disclosed information to questions 1 and 3 but applied section 40(3)(a) of the FOIA to question 2.

8. On 22 May 2015 the complainant requested an internal review of question 2. He also asked E-ACT to now respond to the remaining parts of his original request of 17 April 2015: parts 1, 2, 3, 4 and 5. However, the complainant changed the request slightly at part 3 to:

"Disclose the number of staff that have left the academy in each department e.g. humanities, science, English, maths in 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015"

9. On 30 June 2015 and 9 July 2015 the complainant wrote to E-ACT asking for an update on his internal review and for information on the remaining parts of his request.
10. On 9 July 2015 E-ACT informed the complainant that his internal review was ongoing. Regarding the remaining parts of the request, E-ACT upheld its original position and stated that it would exceed the cost limit.
11. On 10 July 2015 the complainant acknowledged receipt of the internal review update and asked E-ACT to provide information to his request of 22 May 2015. He clarified to E-ACT that he considered five remaining questions to be outstanding from his request.
12. E-ACT responded on the same day and directed the complainant to the ICO's guide on costs of compliance. It maintained its position regarding its interpretation of the Fees Regulation. E-ACT also informed the complainant that the internal review would be concluded in due course.
13. On the same day the complainant wrote to E-ACT and said that he would like the remaining questions of his request to be answered and asked when the internal review would be completed.
14. The complainant contacted the Commissioner on 11 July 2015 to complain about the way his request for information had been handled.
15. Following an internal review, E-ACT wrote to the complainant on 30 July 2015 and upheld its decision to apply section 40(3) of the FOIA to question (2) of his request of 20 April 2015.
16. On 2 August 2015 the complainant wrote to E-ACT asking for information and stating that this was a new request. The information requested consisted of five points which were similar to the original request of 17 April 2015. However, points 4 and 5 asked for the same previous details and included a request for additional information. This new request was as follows:

1. *"Disclose the number of staff at the academy in 2010"*

2. *Disclose the number of staff that have left the academy since its inception and the reasons why they have left. E.g.) redundancy, resignation, dismissal*
 3. *Disclose the number of staff that have left the academy in each department e.g.) humanities, science, English, maths in 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015*
 4. *Disclose the number of staff that have been disciplined since the inception of the academy and the reasons behind of the disciplines including ethnic breakdown*
 5. *Disclose the number of staff that have been suspended since the inception of the academy and the reasons behind the suspensions including ethnic breakdown"*
17. On 6 August 2015 E-ACT responded to the complainant's request of 2 August 2015 and maintained its decision that the request would exceed the cost limit.
 18. On the same day the complainant wrote to E-ACT and argued that his request of 2 August 2015 should be treated as a separate FOI request.
 19. On 16 August 2015 the complainant requested from E-ACT information which it considered to be identical to points 2 and 3 of his request made in April 2015 and point 3 of his request of 22 May 2015.
 20. On 3 November 2015 E-ACT wrote to the complainant again and revised its position. It found the complainant's requests to be vexatious under section 14(1) of the FOIA.

Scope of the case

21. The complainant contacted the Commissioner on 17 November 2015 to complain about the way his requests for information had been handled. During the course of the investigation E-ACT was asked to clarify which requests it was applying section 14 to. It confirmed that it was relying on section 14 to all of the requests. It also informed the Commissioner that it considered that section 44(1) also applied to question (2) of the request of 20 April 2015.

22. The Commissioner therefore considers the scope of the case is to determine whether E-ACT is entitled to rely on section 14 to the requests. If this does not apply he will then go on to consider the application of sections 40 and 44.

Reasons for decision

Section 14 – vexatious requests

23. Section 14(1) of the FOIA states that a public authority may refuse a request if it is vexatious. The FOIA does not define the term, but it was discussed before the Upper Tribunal in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440(AAC), (28 January 2013).
24. In this case the Upper Tribunal defined a vexatious request as one that is *“manifestly unjustified, inappropriate or improper use of a formal procedure.”* The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
25. In making his decision the Commissioner has obtained submissions from both the complainant and E-ACT to understand the circumstances surrounding the requests in order to reach a decision on whether they are vexatious. The Commissioner will consider their arguments where appropriate.

E-ACT's position

26. E-ACT stated that following a review of the complainant's information request of 2 August 2015 and his previous requests for information, it found the requests to be vexatious under section 14(1) of the FOIA.
27. E-ACT considers that the requests are vexatious as they are part of a long stream of repetitive FOI requests made by the complainant. E-ACT argued that the requests appear to be aimed at uncovering information about specific members of staff and made in pursuit of what it considers to be of a personal interest rather than in the public interest.
28. E-ACT reported that it is not aware of any connection between the complainant and the Academy and that he is neither a parent nor a member of staff.
29. E-ACT said that despite the fact that the complainant has no apparent connection with the Academy, he has made a series of what E-ACT considers to be persistent and repeated FOIA requests.

30. E-ACT provided the Commissioner with a timeline of FOIA requests made by the complainant. E-ACT argued that some parts of the request were identical to previous requests made and that this was a clear attempt to circumvent the FOIA legislation regarding cost limits. Therefore, E-ACT reiterated its view that the requests are vexatious.

The complainant's position

31. The complainant argued that E-ACT is trying to circumvent his FOIA requests and that on many occasions he considered it to have misinterpreted the FOIA legislation.
32. The complainant is of the view that E-ACT is not being open and transparent and that it had been evasive when disclosing FOIA requests.
33. The complainant, for clarification purposes outlined how his request had been misinterpreted. He argued that his request of 22 May 2015 had been reissued following the advice within the refusal notice of 20 April 2015. This was in regards to the complainant's original request of 17 April 2015 in which he narrowed the scope of his original request.
34. The complainant reported that his original request consisted of eight questions that had been refused by E-ACT as it would exceed the cost limit. He narrowed the scope of this request and he asked three questions as opposed to the original eight. This information was disclosed to the complainant on 21 May 2015 as it did not exceed the cost limit.
35. The complainant explained that on 22 May 2015 he narrowed the scope of his original request of 17 April 2015 and asked for information to the remaining five questions. He considered that these five questions would not exceed the cost limit and should be disclosed.
36. The complainant argued that his request of 22 May 2015 should have been treated as a separate request with a reduced number of questions. He is of the view that this could not be refined any further apart from reducing the number of questions which the complainant had done in his request of 16 August 2015.
37. The complainant further argued that all the questions which he had submitted as part of FOIA requests are either similar or the same questions, because they had been refined or the scope had been narrowed based on E-ACT's advice. The complainant added that he had contacted E-ACT numerous times asking for advice on how he could obtain information to his requests.

The Commissioner's position

38. The Commissioner has considered E-ACT's arguments and he acknowledges its concern about the amount of requests made by the complainant. He has viewed the timeline provided by E-ACT which shows dates of the complainant's requests, E-ACT's responses and the questions asked in the complainant's requests.
39. The Commissioner accepts that there has been a "*long stream*" of repetitive requests. Although the complainant has argued that the requests were made in order to refine and narrow the questions so that they would not exceed the cost limit and enable E-ACT to disclose the information, the Commissioner considers that they are substantially the same as previous requests.
40. The Commissioner has reviewed the requests and he has found evidence of a series of persistent and repeated information requests submitted by the complainant.
41. Having considered all the circumstances of this case, the Commissioner accepts that this repetitive nature of returning to the public authority with the same or similar requests has imposed an unreasonable burden on E-ACT.
42. The Commissioner has therefore determined that E-ACT is entitled to characterise these requests as manifestly unreasonable and vexatious. Therefore he upholds the use of section 14(1).
43. As he has upheld the use of this exemption, the Commissioner has not gone on to consider the use of section 40 and section 44(1) in this case.

Right of appeal

44. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. 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.
46. 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

Rachael Cragg
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