

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 February 2016

Public Authority: Balcarras School
Address: East End Road
Charlton Kings
Cheltenham
Gloucestershire
GL53 8QF

Decision (including any steps ordered)

1. The complainant has requested from Balcarras School (the 'School') information regarding the School's appeals process.
2. The Commissioner's decision is that the School is entitled to rely on section 14(1) of the FOIA to refuse this request. Therefore, he does not require the School to take any further steps.

Request and response

3. On 30 June 2015 the complainant wrote to the School and requested information in the following terms:

"Under the Freedom of Information Act, I would like to request the following information regarding Balcarras School's appeals process:

1) copies of the letters sent by the Appeals Panels to appellants under the school's appeals procedure (with the appellants' names and addresses redacted) informing them of:

i) the appeal hearing arrangements; and

ii) the constituent members of the Panel, including the clerk to the Panel, and whether each was a lay or non-lay member

for each of the previous 4 years (2011 - 2014)

2) details of any changes subsequently made to the constitution of each of the Appeals Panels for the years referred to in 1) above, and the reasons for such changes

3) details of who appointed the appeals panel this year and for each of the previous 4 years (i.e. 2011 - 2015), whether this was the admission authority (i.e. the school) or the clerk to the panel, and how the clerk and each panel member were selected

4) copies of the decision letters sent to Balcarras School by the Appeals Panels which heard the appeals for this year and each of the previous 4 years (i.e. 2011 - 2015)

5) confirmation that [name redacted] did not attend the presentation of the school's case to this year's appellants at the school on Monday 15th June at 5pm"

4. On 13 July 2015 the School responded and apologised for the delay in its response. It stated that all information about appeals is exempt from release to the public under the FOIA.
5. On the same day the complainant asked for an internal review into the refusal to provide the information.
6. On 20 July 2015 the complainant requested further information from the School of the following description:

"I would also like to request the following information:

1) Details of the training for the Balcarras appeals process undertaken by each of this year's panel members, and of appropriate training undertaken by the clerk to the panel, to include:

- a) the dates each panel member received the training*
- b) details of the person or organisation who delivered the training*
- c) the content of the training*

2) Details of any advertisements for lay members of the appeals panel placed in local newspapers since the beginning of 2012, including:

- a) the date each advertisement appeared*
- b) the newspaper in which advertisement was placed*
- c) the content of each advertisement*

I did have another request to include with my last email below, as follows:

3) Details of how [named individual] came to be on the original panel communicated to us for this year's appeals (e.g. was she approached and if so by whom), and what checks were made to ensure she was independent."

7. On the same day the School responded and it provided answers to parts of the request. The School informed the complainant that the named individual is unable to communicate with appellants or discuss cases after the hearings have taken place.
8. The complainant asked the School to specify which of his numbered requests and emails that this statement was in relation to.
9. The School informed the complainant that he should get an official response from the EFA (Educating Funding Agency) after it has investigated his appeal hearing process.
10. On 15 September 2015 the complainant asked the School to confirm that it will be providing information detailed in his email of 20 July 2015.

Scope of the case

11. The complainant contacted the Commissioner on 7 October 2015 to complain about the way his request for information had been handled. Following this the School provided further responses to the complainant. Subsequently the complainant clarified to the Commissioner what information he considered to be outstanding from his request, namely:
 - parts 1, 2 and 4 of the request of 30 June 2015;
 - part 1 (c) of the request of 20 July 2015;
 - parts 2 (a) (b) and (c) of the request of 20 July 2015;
 - part 3 of the request of 20 July 2015
12. Following the Commissioner's intervention the School responded to these points in a letter to the complainant dated 17 December 2015.
13. Subsequently the complainant wrote to the Commissioner again on 6 January 2016 and challenged and queried the responses that the School had provided on these points.

14. The Commissioner forwarded the complainant's comments to the School. In response, the School applied section 14 of the FOIA to the request. The School confirmed that this applied to all parts of the request.
15. Therefore the Commissioner considers the scope of the case is to determine whether the School is entitled to rely on its subsequent application of section 14.

Reasons for decision

Section 14 – vexatious requests

16. 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).
17. 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.
18. In making his decision the Commissioner has obtained submissions from both the complainant and the School to understand the circumstances surrounding the request in order to reach a decision on whether the request is vexatious. The Commissioner will consider their arguments where appropriate.

The School's position

19. The School provided some background to this case, which it believed was relevant. The complainant had applied for a place at the School for his child, who was refused a place in April 2015. He appealed against this decision, and an appeal hearing was heard in June 2015. This appeal was not successful.
20. The School argued that the complainant has been asking questions and harassing the School for over six months which has led to a disproportionate amount of time spent dealing with his requests. It explained that since the appeal hearing, the complainant has continued to contact members of staff at the School.

21. The School stated that the complainant had contacted the clerk of the appeal panel on numerous occasions with excessive requests. The School provided the Commissioner with a time-line of the 30 emails it had received from the complainant during the period from April 2015 to November 2015 and also the 15 responses which the School submitted to him.
22. The School said that the complainant's concerns were subsequently sent to the Deputy Head of the School as they had become a burden on the staff receiving them. It stated that since the case was sent to the Deputy Head, he had received correspondence from the complainant three times within two days asking questions about the School's admissions appeals.
23. The School argued that some parts of the request had already been answered and that the questions had no relevance to the complainant's admissions appeal case.
24. The School reported that the complainant repeatedly asked the same questions and it is was of the view that he was trying to waste School time.
25. The School argued that the requests are vexatious due to the complainant's unreasonable persistence. It said that the School had been harassed by what it considered to be a constant barrage of questions and information requests from the complainant.

The Commissioner's position

26. The Commissioner has considered the School's arguments and he acknowledges its concern about the amount of information requests made by the complainant. He has viewed the timeline provided by the School which shows the dates of the interactions between the School and the complainant.
27. The Commissioner notes the series of requests submitted by the complainant and that the School had provided some information to him relating to his request. He accepts that the School has spent a considerable amount of time and resources in dealing with the information requests and other correspondence from the complainant.
28. The Commissioner acknowledges that there had been excessive information requests submitted by the complainant and which he considers to be unreasonable persistence.
29. The Commissioner acknowledges that the background to this case is about an application for a pupil's place at the School which had been refused at the Schools appeal process. Therefore the Commissioner

considers that the disclosure of further information requested (if it was held) would have no relevance to the complainant at the time of the request.

30. The Commissioner has noted that the complainant considers that the School has obligations to comply with his request. The complainant argued that he has a right to access this information and not to be provided with only some of the information which he had asked for.
31. The Commissioner is of the view that the information request serves no useful purpose as the issue of the allocation of a school place to the pupil had already been investigated by the School through its appeal process. Therefore the Commissioner considers the complainant's use of the FOIA is a means to continue to challenge the School's decision.
32. 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 the School.
33. The Commissioner has therefore determined that the School is entitled to characterise these requests as manifestly unreasonable and has consequently applied section 14(1) of the FOIA.

Right of appeal

34. 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

35. 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.
36. 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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