

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 May 2018

**Public Authority:** Warwickshire County Council  
**Address:** Shire Hall  
Warwick  
CV34 4RL

#### Decision (including any steps ordered)

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1. The complainant has requested information held by Warwickshire County Council (the council) that relates to the admission process for grammar schools in its area.
2. The Commissioner's decision is the council has correctly applied section 14(1) of the FOIA (vexatious request).
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. The complainant submitted a request for information to the council on 24 March 2017. Details of the full request have been included in Annex A which is attached to this decision notice.
5. The council responded to the complainant on 25 April 2017. It stated that it was refusing the request as it was deemed to be vexatious within the meaning of section 14(1) of the FOIA. It went on to provide a detailed explanation of the reasons for its decision.
6. Following an internal review the council wrote to the complainant on 30 August 2017. It confirmed that it was satisfied that the council's original approach had been thorough and appropriate and that it had been correct to apply section 14(1) to the request.

## Scope of the case

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7. The complainant contacted the Commissioner on 11 September 2017 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether the council was correct to apply section 14(1) in response to the request.

## Reasons for decision

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### Background

9. The complainant's son was offered a place at a particular grammar school (the school) in 2013 on the understanding that he was to be living in a particular property as specified by the family by the time of admission. The school subsequently determined that the statement regarding the intended residence was fraudulent or misleading and it withdrew its offer without providing an opportunity to appeal to an independent panel.
10. This led to a dispute about how both the council and the school had handled matters and resulted in the complainant submitting separate complaints about each party to the Local Government Ombudsman (LGO).
11. In March 2014 the LGO upheld, in part, the complaint against the council but only in relation to the provision of information on its website in relation to the admission process. In May 2014 the LGO upheld the complaint about the school in full. It recommended that the complainant be given the opportunity to appeal against the school's decision to withdraw the offer to an independent panel.
12. Following an appeal, the complainant's son was offered a place at the school which was then declined.
13. Since 2013 the complainant has made a number of requests to the council relating to the admissions process for grammar schools in its area. On 6 June 2014 the complainant contacted the Commissioner to complain that the council had refused to comply with the requests that he had submitted in April and May 2014 under section 14(1) of the FOIA.
14. The Commissioner issued a Decision Notice on 6 November 2014 which concluded that the council had correctly applied the provisions of section 14(1) when refusing these request. The complainant subsequently

submitted an appeal against this decision to the First-tier Information Rights Tribunal (Tribunal).

15. The Tribunal decision was issued in May 2015<sup>1</sup>. The judge stated that it had been significant to note that the ICO had regarded the whole series of requests that the complainant had made to the council over an 18 month period to be variations on a single theme, that being primarily the allocation of grammar school places in Warwickshire over a period of approximately two years.
16. The judge advised that whilst he accepted that the requests that had been made in April and May 2014 were similar to those previously submitted by the complainant (in that they related to the admissions policy and the execution of that policy) this did not mean that they should necessarily be seen as *'more of the same'*.
17. The judge went on to say that he regarded the previous requests to be about the son's application to the school whereas the requests submitted in April and May 2014 were on the more general issue of the admissions process itself.
18. The judge, in contrast to the ICO and council's view, deemed the latter requests to be on a different topic and for a different purpose than those previously submitted, that being for publication on the complainant's website. He stated that this *'marked a clear change of direction from the barrage of requests on the previous topic'*
19. The Tribunal decided that, as the requests under consideration were focused on a fresh, if loosely linked, subject matter to those previously submitted by the complainant, it was not persuaded that section 14(1) was engaged and allowed the appeal.
20. Following the Tribunal decision the council provided the complainant with information in response to his requests of April and May 2014.

#### **Section 14 -vexatious request**

21. Section 14(1) 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. There is no public interest test.

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<sup>1</sup>[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1546/Matalia,%20Ami%20EA.2014.0284%20\(05.05.15\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1546/Matalia,%20Ami%20EA.2014.0284%20(05.05.15).pdf)

22. Whilst the term 'vexatious' is not defined in the FOIA, in the case of the Information Commissioner v Devon CC and Dransfield<sup>2</sup> the Upper Tribunal commented that the term could be defined as the '*manifestly unjustified, inappropriate or improper use of a formal procedure*'. The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
23. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering 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.
24. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed 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).*
25. The Commissioner's guidance<sup>3</sup> on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.

## **Context and history**

26. The Commissioner's guidance states that when considering the context and history in which the request is made, a public authority will need to

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<sup>2</sup> <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

consider the wider circumstances surrounding the request. Included within this should be an assessment as to whether there are any particular factors which would weaken or support the argument that a request is vexatious.

27. In this particular case, the reasons for the council's decision that section 14(1) was engaged were comprehensively set out in both its original response to the complainant dated 25 April 2017, and its internal review response of 30 August 2017.
28. The council has confirmed to the Commissioner that, upon review, its decision remains unchanged and that the detailed explanations that it has already provided to the complainant remain relevant. The council has therefore provided little further by way of representations to the Commissioner directly, although it did confirm it would provide any additional information she may require in order to carry out her investigation.
29. The council has advised that it has considered the overall background to the complainant's request, including previous requests which it believes were on the same or related matters, when making a decision as to whether section 14(1) is engaged in this instance.
30. The council states that the dispute relating to the application made by the complainant on behalf of his son for a place at the school was ongoing until November 2014. It has advised that during that time, and subsequently, the complainant has continued to make requests for information which he has deemed to be relevant to the dispute.
31. In addition, the council has advised that whilst the dispute was still ongoing, the complainant published information online which '*compromised*' its 11 plus entrance exam process. The council confirmed that in 2013 it applied for an interim injunction against the complainant preventing him from disseminating and publishing the information relating to the 11 plus exams. This was subsequently converted to a full injunction in March 2015 and it would seem that an appeal by the complainant in 2017 was dismissed on the basis that the publication of the relevant information on his website would breach the council's right to confidentiality.
32. The council states that throughout the course of the initial and subsequent appeal proceedings, the complainant has made numerous requests for information. The council suggests the complainant's intention was to secure information he thought would compromise the council's position during these proceedings.

33. The council has advised that, in total, the complainant has made 28 FOIA requests between the period 26 October 2012 and 24 March 2017 (including the one currently under consideration) that are about the school and/or the process for entry to grammar schools in the local area. It states that 10 of these requests were submitted after the Tribunal decision in May 2014. In addition, the complainant has submitted five internal review requests.
34. The council has advised that it has taken account of the previous Tribunal decision referred to in the 'Background' of this Decision Notice. It states that it has considered whether the current request has a sufficiently similar theme to previous requests received to be regarded as '*more of the same*' or if it is a '*fresh*' request on a different topic by further categorising the 28 requests into 3 subcategories.
35. The council has advised that the first subcategory of 13 requests, which includes the current request, all relate either in part, or in full, to the complainant's application to the school for a place for his son.
36. Although a minor point, the Commissioner would add that the council's figure of 13 requests does not concur with the additional synopsis of each request included in the refusal notice issued to the complainant. This suggests that there were 12 requests in total in this subcategory, rather than 13 (but still 28 requests in total). The Commissioner has taken it to be that 12 requests is the correct number, and will refer to this figure for the remainder of this Decision Notice.
37. The second subcategory set out by the council includes 15 requests received from the complainant that relate either in part, or in full, to the grammar school entrance exam process.
38. The third subcategory includes only the first request made by the complainant to the council in 2012. This appears to have related to a completely separate school matter to all the other requests submitted by the complainant. Indeed, the council itself has suggested that this request is only relevant to its consideration of the current request '*to the extent that it was the trigger point*' for the commencement of what it describes to be a '*campaign*' by the complainant against the council and the school.
39. The council has argued that, given that the current request is part of the same subcategory as 11 other requests that are based on same topic and purpose, it can be shown to be '*more of the same*'.
40. The council goes on to say that after considering this, and the background of the complainant's involvement with the council, it views the request to be contributing to an aggregated burden (on the council)

over a significant period of time that is disproportionate and can no longer be justified.

41. The complainant has placed some weight on the outcome of the previous Tribunal decision believing that this has relevance to the current request. He refers to the fact that the Tribunal stated that the council was wrong to have considered his previous correspondence and requests as a factor in the application of section 14(1) in that instance. He argues that as the circumstances of the case remain unchanged, the council cannot now say that his current request is vexatious.

### **Burden on the authority**

42. The council has advised that whilst the complainant's current request consists of questions arranged in a numerical order from 1 to 31, it views there to be, in reality, more than 47 separate questions contained therein that would require consideration and that they are not directed at any one document or piece of information. It disputes the complainant's assertion that this request would only take one hour to deal with, suggesting that it would take considerably longer. It also adds that it is of the view that some of the questions are requests for opinions or views, rather than a request for recorded information.
43. The council states that it had informed the complainant on a number of previous occasions that, under FOIA, it can only consider requests for recorded information and not requests for opinions. It states that despite this, he continues to request responses to questions that are seeking an opinion in support of his views on a particular matter or dispute.
44. The council asserts that if it is identified that some, or all, of the questions do relate to recorded information, it would take a significant effort to locate where the information may be contained, particularly given that the entirety of the complainant's request relates to a dispute that happened four years ago. It goes on to say that the complainant is already aware that a number of officers that were initially involved in matters are also no longer employed by the council.
45. The council states that it accepts that the request, if considered in isolation, may not be seen to be vexatious but assumes that quality when considered in the context of the complainant's past involvement with the council, and his previous 11 requests that it has subcategorised as being on the same topic as his current request.
46. The council goes on to say that the history of the complainant's involvement with the council, and the frequent number of requests that have been made, contribute to an aggregated burden on the council

over a significant period of time that is disproportionate and can no longer be justified. It states that it considers the burden on the authority to be so grossly oppressive that it could not reasonably be expected to comply with the complainant's request. It states that to do so would place undue strain on the valuable time and resources of the council.

47. The complainant suggests that it would not be difficult, or cause a burden, for the council to provide the information he has requested. He also states that the number of officers that are aware of his case at the council is sufficient for much of the information that he has requested to be identified and provided easily. He also makes comment that it has taken more time and resources for the council to have refused his request than to have provided him with the information.

### **Personal grudge**

48. The council is of the view that, during the four year period in which the complainant has made requests to the council, he has purposely continued to name and target individual officers within his requests. The council has advised that whilst it accepts that it might be reasonable in some circumstances to make reference to officers that hold particular information that a complainant is requesting, it considers the complainant's repetitious singling out of certain officers to go beyond this. It states it believes it to be an attempt by the complainant to further his personal grudges against those officers that have taken decisions, or provided information, that he does not agree with.
49. The council goes on to say that the complainant's continuous reference to named individuals, including within the current request, further demonstrates the personal enmity that the complainant holds against particular council employees and his intention to cause further distress and irritation to those named individuals.
50. The council also adds that in correspondence accompanying the complainant's requests and other communications, he has repeatedly threatened police action against individuals and has made reference to his unfounded allegations that officers committed perjury during the giving of evidence at court as part of the council's injunction proceedings against him.
51. The complainant has contested that he has any personal grudge. He refutes the suggestion that any past correspondence has included any content that would suggest that this is the case, or that he is targeting any officers in the council. He has advised that he is aware that certain officers have been involved in relevant matters and they have been identified in requests and correspondence in an attempt to reduce the burden on the council when locating information.

### **Unreasonable persistence**

52. The council has advised that (at the time of its response to the current request) a considerable amount of time had passed since the original dispute. It has gone on to argue that matters relating to the complainant's dispute about the handling of his son's application to the school have been subject to '*significant independent scrutiny*' and it would not serve any useful purpose if the information was provided in response to the current request.
53. The council also makes comment about a reference made by the complainant that he had not yet exhausted all avenues in relation to the dispute about his son's application to the school, and that further litigation was possible. It states that it is not aware of any legal avenue in which the complainant could pursue this further, given that he has already been successful at the independent admission appeal. It therefore considers the request to be an example of the complainant's unreasonable persistence and is a '*blatant attempt to reopen an issue that has already been resolved, for the sole purpose of causing disruption and annoyance to the Council.*'
54. The complainant argues that, given the council's approach to his requests, persistence is reasonable in the circumstances. He states that he has not exhausted all the legal processes open to him in respect of how his son's school application was handled, and that it is not for the council to prejudge the merits of litigation when considering an FOIA request.

### **Frequent and overlapping requests**

55. The council states that the culmination of the requests received from the complainant in respect of his son's application to the school would itself justify reliance on section 14(1). It adds that when this is reviewed against the frequency and overlapping nature of the requests, this heightens the significance of this indicator.
56. The council goes on to say that the complainant has submitted follow up requests and enquiries regardless of what information he has received in response to his initial requests. It argues that this indicates that the complainant is never satisfied with any response that he receives and can be regarded to be unduly obsessive when considering the pattern of behaviour as a whole. It goes on to say that dealing with this behaviour places a wholly disproportionate burden on to the council.
57. The council also states that the complainant has made repeat requests for information. By way of example it compares his request of 8 April 2014 where the complaint asks the council to '*confirm the average time*

*it takes [name of school redacted] or WCC to consider an application and process it' and his request of 24 March 2017 where he asks that the council 'Please confirm the average time it had taken [name of school redacted] to process or consider an application for a place in 2013? (question 20)*

58. The council states that the complainant has proceeded to ask for the same information again, despite having previously been informed that the information was not held. It suggests states that the repetition of questions, and also what it regards to be an overlap of some of the previous requests, is an attempt to cause further disruption and annoyance to the council.
59. The council has also advised that it regards it to be '*notable*' that all of the complainant's requests follow what it describes to be '*short time intervals*'. It states that 15 (over half) of the requests from the complainant were made within 8 working days of a response being provided either to that request, or to another request submitted that had not yet been answered. In addition, 6 of the 15 requests identified were made on the same day that either a response was provided by the council, or at the same time that another request was submitted by the complainant.
60. The council states that it believes that the pattern of frequent, overlapping and repeat requests is likely to continue, should it provide a response to the current request, or any further requests that are made.
61. The complainant has argued that the questions he has asked are not identical to previous requests and has indicated that he is of the view that he has made legitimate requests for information that he requires. He states his requests have been framed in a manner that will enable him to obtain information which is not already in his possession that he requires to pursue matters that are still outstanding.

### **Futile requests**

62. The council states that as it considers the current request relates to the complainant's dispute which it believes to have been resolved, the provision of any further information is unlikely to serve any useful purpose. Therefore, it regards it to be '*futile*' when considered as part of the complainant's ongoing sequence of requests and unreasonable pattern of behaviour in this matter.
63. The complainant argues that the request is not futile reiterating his argument that the information that he has requested will be of genuine use in litigation.

### **Serious purpose and value**

64. The council has confirmed that it has specifically considered whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption and irritation that would be incurred by complying with the request.
65. It states that whilst the FOIA is applicant blind, the Commissioner's guidance confirms account can be taken of other comments made by the requester about the purpose behind the request, and whether there is likely to be any wider public interest in the information being made available to the public.
66. The council has advised that, in response to the complainant's arguments, it still believes it to be unclear what legal avenue could still be pursued in relation to the past dispute. However, it confirms that it has still considered whether the information would serve any useful purpose, if such litigation were to take place.
67. The council has referred to its past (successful) application for an injunction preventing the complainant from publishing details of the 11 plus tests on his websites. It has advised that, when considering whether there is serious purpose and value to the request, it believes it to be relevant to take into account the nature of FOIA requests that the complainant made to additional third parties during the course of the injunction proceedings.
68. It refers, by way of an example, to a particular request the complainant made to a University (whilst not confirmed by either party, the Commissioner understands that the University in question devised the 11 plus tests used by grammar schools in Warwickshire). The council states that the complainant had sought the University's view on its legal position in relation to a matter that had been solely between the council and the complainant.
69. The council has advised that the judge presiding over the injunction proceedings made it clear that the information that had been obtained by the complainant from the University about its view did not provide any useful assistance to the case which he was considering. The council goes on to quote him as saying that it was not for any third party to *'make up their minds about the law'* but rather it is for a judge to make that decision based on the submissions that are placed before them.
70. The council has argued that the judge's comments indicate that unless the complainant obtained the council's views and opinions of matters via formal legal submissions, it would be of no assistance to the complainant in any legal proceedings. The council goes on to say that it

is satisfied that this illustrates that there is insufficient grounds to the complainant's identified purpose for his current request of pending or future litigation, and that the value of his request is diminished as a consequence.

71. The complainant argues that his request does have serious purpose and value. He states that information that he has previously obtained has been used as evidence in support of his complaint to the LGO and the appeals panel.
72. The complainant states that he is not trying to 'reopen' an issue that has already been resolved and that he has valid grounds to pursue matters that he believes to still be outstanding. He goes on to say that his requests are still relevant and useful to future litigation and cannot be deemed to be vexatious.
73. The complainant has also advised that information that he has received since his original request to the council has been important and relevant to his case. He also states that he is not trying to cause annoyance and that his efforts to obtain the information requested are a genuine attempt to obtain that information he needs to ensure that issues can be resolved.
74. The complainant has also claimed that the only way that he is able to obtain any information that he requires from the council is by the submission of FOIA requests. He suggests that the council has refused to provide information to him that it would have provided to third parties making the same requests and that it has not properly considered that requests should be considered as 'applicant blind'.

### **Wider public interest**

75. Although section 14(1) is not subject to the traditional public interest test, the council states that it has considered the Commissioner's guidance, and also the Dransfield case in which the Upper Tribunal confirmed that it may be appropriate to ask the following:

*'Does the request have a value or serious purpose in terms of the objective public interest in the information sought'*

76. The council has advised that, in line with considering the purpose of the request, it has also considered whether the information that has been requested would be of any wider public interest.
77. The council also states that, at the previous Tribunal hearing, the complainant had argued that the information that he was seeking had a wider public interest. He had advised that the information would be published on websites that he operates that provide details on the 11

plus process and that parents who required a greater awareness and understanding of this process would benefit from being able to access this information.

78. The council has advised that the information that it regards to be of potential interest to other parents, such as waiting list scores, has not been published on the complainant's website since the Tribunal decision was issued in November 2014. It also states that it has not seen any evidence that any of the information it has supplied has appeared on the complainant's website in a '*manner that would assist other parents.*'
79. The council goes on to say that the only information that the complainant has published following receipt of information via his requests is in relation to the 11 plus testing scheme and this is not set out as guidance, but rather is a criticism of the council's process. It argues that the information received has therefore been used as an opportunity for the complainant to further his dispute.
80. The council has also advised that whilst some of the information that has been provided in response to the complainant's FOIA requests may, if published, be of interest to some parents, it is unlikely to assist them in reaching a view on applying for the 11 plus test for their children, stating that this test varies each year.
81. The council also argues that whilst it believes that the information requested is unlikely to support any further litigation that may take place it would, in any event, be personal to the complainant and would not be of any wider public interest.
82. The council also states that it already provides a significant amount of information to parents via its own website and invites anyone with specific questions to contact its offices directly.
83. The council has advised that, given the above, the information that the complainant has requested, both previously and in relation to the current request, is of little public interest. It goes on to say that, even if it is found that the information requested does have more value, it has determined that providing it to the complainant in this context would not be used to assist parents as has been suggested, but rather would form part of his campaign against the council.
84. In the council's internal review response to the complainant it also adds that it views the current request to include a series of questions which are relevant to the dispute which the complainant appears to have continued to pursue. It goes on to say that this is personal to the complainant and has no overriding value or serious purpose in terms of the objective public interest in the information sought. The council

states that *'the facts clearly demonstrate'* that the complainant is *'abusing the right of access to information under the FOIA regime, which is a wholly inappropriate use of a formal procedure.'*

85. The complainant disputes the council's assertion that information published on his website that originated from his FOIA requests has been used only for the purpose of directly criticising the council. He suggests that the council has not had proper regard to that information that has been made available on a number of his websites which has been of real value to other parents.

### **Information that is already in the complainant's possession**

86. The council states that it has also considered information that is already in the complainant's possession when considering whether there are any other factors that may indicate that the current request is vexatious.
87. The council has suggested that the complainant is requesting certain information that he may already have obtained via other means, or may be held because it originated from him. To support its view, the council has referred to question 19 of the complainant's current request where he asks *'Was WCC ([name redacted]) provided with documentary evidence of a move to [area redacted] by the first day of term?'* The council states that it is of the view that the only person likely to provide the council with such information was the complainant. It therefore considers it to be the case that the complainant is not seeking information from the council but instead is trying to get the council to acknowledge a statement in relation to information that he already holds. The council argues that it therefore regards his actions to be an inappropriate use of the FOIA.
88. The council has also made reference to question 26 of the current request where the complainant includes the comments *'Did [name of officer redacted] feel that the admissions issue may cause stress and anxiety to [name redacted] and his family and felt the decisions should be quick to avoid this (you may wish to check her emails)'* and *'did she believe the threat if withdrawing a place would cause a reasonable person stress and anxiety?'*. The council believes that such questions suggest that the complainant's requests are not a legitimate effort to obtain recorded information that is held but rather a means of causing annoyance and disruption.
89. The complaint, in response, argues that he has not requested information that he already holds and is making a genuine effort to seek information that he believes would be of some value. He suggests that the comments that he has made, including those referred to by the

council above, were an attempt to help explain what information he is seeking and to aid the council in its response.

90. The complainant also states that he is concerned that the council is taking into account how his questions may help in any further legal action he takes and is therefore finding reasons to avoid providing a proper response.

### **Section 40(1)**

91. In this instance, the council has confirmed that it views some of the information that has been requested by the complainant to be the personal data of his son. The council states that, as a result, it has considered whether parts of the request should be considered as exempt under section 40(1) of the FOIA and dealt with as a subject access request.
92. If the information that has been requested is the requester's own personal data, there is an absolute exemption from the FOIA access rights under section 40(1). A public authority will then need to consider the request for the relevant information under the subject access provisions contained within section 7 of the Data Protection Act 1998 (DPA).
93. In certain circumstances a parent or guardian may be entitled to exercise the right of subject access on behalf of a child in their care. This is most often the case where a child is still too young to understand the implications of subject access rights themselves.
94. Given this, when dealing with an FOIA request that includes information relating to a child who is in the care of the requester, consideration should be given to whether section 40(1) is relevant.
95. In this instance the council has concluded that section 40(1) would not be engaged. It states that, when taking this view, it has considered the Commissioner's guidance on subject access requests where it relates to information about children. It has advised that, in particular, it has considered whether it would have been appropriate to disclose the information relating to the complainant's son in response to the current request.
96. The council states that it is of the view that the complainant does not have the right to request and receive personal data held about his son under section 7 of the DPA. This is because it is confident that the complainant's son has sufficient capacity and understanding to make his own request, should he wish to do so. It has advised that he is 15 years old and, given the outcome of his 11 plus exam, is clearly a high achiever academically. It believes that it is therefore likely that he now

has the requisite maturity to understand and make a request on his own behalf, but has not done so. It is therefore satisfied that it is correct to consider the application of section 14 to the entire request.

97. The complaint has argued that the council's reference to section 40(1) in its refusal notice and internal review response is a *'red herring'*. He has argued that the questions he has asked relate to an application for a school place that he made on behalf of his son who, at that time, was ten years old and could not have lawfully made such application in his own right. He states that all previous information he has requested about that application has been provided to him in response to his requests and that, given this, the council is now being obstructive.

### **The Commissioner's view**

98. The Commissioner has considered the arguments presented by both the council and the complainant.
99. In addition, the Commissioner has also taken into account the findings of the previous Tribunal decision. However, she is mindful that there are key differences which need to be taken into account when considering whether section 14(1) is engaged in this instance.
100. The Tribunal took the view that the requests it was considering showed a *'change of direction'* from those previously submitted by the complainant, both with regard to topic and purpose and therefore could not be regarded to be *'more of the same'*. This was a key factor in the Tribunal's decision that the requests were not vexatious.
101. The Commissioner has had regard to the fact that the council has, in light of the Tribunal decision, further subcategorised the 28 requests it has received from the complainant since 2012. She understands the reasons for the council's decision to link 11 of the requests received with the current request on the basis of their subject matter. However, she notes that the 11 previous requests the council has placed in the same subcategory as the current request were submitted between 9 July 2013 and 29 September 2015. Approximately 18 months then passed before the complainant made his current request (although he has made other requests in the meantime that relate to the more general issue of the admissions process). In addition, 10 of the 11 requests that fall into the same subcategory as the current request were submitted before the LGO decision of 11 May 2014 that ruled in the favour of the complainant.
102. Given that a significant amount of time has passed since the previous requests were made, it has been difficult for the Commissioner to accept that the current request forms part of a series of frequent requests

made by the complainant on the same topic. Furthermore, the circumstances in which the majority of the previous 11 requests were made have changed significantly in that the outcome of appeals relating to the dispute have been published. Therefore, the Commissioner does not agree that the current request can be regarded to be '*more of the same*', in respect of a continuation of the specifics raised prior to 2014.

103. In light of the above, the Commissioner is of the view that the council has not sufficiently demonstrated that it will be grossly oppressive or burdensome in terms of the resources required to deal with the current request in isolation.
104. The Commissioner has gone on to consider the council's argument that the complainant has used the FOIA to further his personal antipathy against particular officers at the council. She appreciates that asking for opinions and information held by particular officers may not always be the most appropriate way to request information under the FOIA access regime. However, she is of the view that, based on the information that has been made available to her, there is insufficient evidence to determine that the complainant's current request is a deliberate attempt to further any personal grudges against particular officers at the council, or to cause distress to those officers.
105. The Commissioner's guidance confirms that serious purpose and value will often be the strongest argument in favour of the requester when a public authority is deliberating whether to refuse a request under section 14(1). It goes on to say that the key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request.
106. The Commissioner appreciates the reasons why the complainant may view this case to be so similar to that which was considered by the Tribunal that the outcome should be the same. However, whilst in both cases the requests can be linked to the general issue of the admissions process, a key difference is the topic, and purpose of the requests.
107. The request currently under consideration is for information that can primarily be linked to the son's school application, rather than the more general subject of the 11 plus process itself. Indeed, the complainant himself has advised the council that the information that he has requested predominantly relates to the dispute about how his son's application was handled, and that he requires it for the purpose of further litigation (rather than for use on his website to inform other parents about the 11 plus process).

108. The Commissioner acknowledges that even if it is the case that the complainant requires the information for his own purposes, it does not necessarily follow that it would not be of interest to other parties if disclosed, for example, on the complainant's websites.
109. However, having considered the content of the request, she has found it difficult to identify any part of the request that would be of any obvious interest to the public at large. Many of the questions are directly related to the son's application to the school and, in addition to this, relate to actions taken and the processes that were in place in 2013.
110. The Commissioner is therefore of the view that there is no evidence which would suggest that the information that has been requested would be of any value to any other parents or third parties.
111. The Commissioner has also considered whether the complainant's claim that the information requested will be used in further litigation would weaken the council's argument that the most recent request has no serious purpose or value.
112. The Commissioner accepts that there may be further opportunity for the complainant to pursue matters that relate to the dispute and if this is the case, that matters relating to the son's application to the school have not yet been fully resolved. However, she has found it difficult to determine what additional information could be provided in response to the current request that would be of any further value, either in support of any future litigation, or for any other similar purpose.
113. The Commissioner has had regard to the fact that the complainant's current request is focussed predominantly on information held relating specifically to the year 2013. In addition, she has taken into account the fact that a considerable amount of time has passed since the LGO and independent appeals panel made their decisions. The son is also now over 15 years old and has been at a different grammar school for a significant amount of time. In her view, these factors weaken the complainant's argument that the information requested will be of value.
114. Having had regards to the past communications between the council and the complainant, the Commissioner is also minded to accept the council's argument that any further response it provides will not resolve matters and will only serve to reopen points that have already been addressed, or which the council has already advised it is unable to address.
115. Given the above, whilst the Commissioner would not want to undermine what may be a genuine belief of the complainant that the requested information would be of help to him, it is the Commissioner's view that

his argument that it is required for future litigation does not, in itself, add sufficient weight to enable her to conclude that the request has serious value and purpose. She is also not persuaded that the information requested is so materially different to that which has previously been requested, or would be of any great value, whether it be for the purpose of litigation or otherwise.

116. Whilst the Commissioner is of the view that the current request cannot be regarded to '*more of the same*', she accepts that the complainant's past dealings and contact with the council do have some relevance and should be taken into consideration.
117. The Commissioner has already confirmed that she does not agree with the council that there is insufficient evidence to conclude that the complainant is using the FOIA to further personal grudges against particular officers. However, she does acknowledge that the current request contains a significant number of questions that either directly, or indirectly, ask for the council's view or opinion on a particular point. The Commissioner is doubtful that the council will hold information that will provide answers to many of these questions.
118. In addition, the Commissioner views there to be a realistic possibility that the complainant will continue to ask questions in order to continue debate on these issues. She has concluded that the volume, content and frequency of the complainant's past requests and correspondence to the council display an unreasonable persistence and indicate that it is unlikely that he will ever be satisfied with the outcome of any information provided.
119. The Commissioner is also satisfied that the request has been submitted primarily to suit the complainant's own purposes and any further value to the public at large is, in her view, is likely to be very little. In addition, the Commissioner is mindful of the fact that should there be any future litigation, the court will be able to ask any questions it requires an answer to and it can compel any third party, including the council, to provide information required in order to form a judgement.
120. The Commissioner has given consideration to the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1). She is satisfied that the council has sufficiently demonstrated that a point has been reached where it is no longer reasonable for it to expend further resources, regardless of how much, on dealing with requests made by the complainant that have no serious purpose or value, either to the requester himself, or the wider public. The Commissioner therefore finds that section 14(1) has been applied correctly in this case.

## Other matters

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### Section 40(1)

121. The Commissioner notes that the council also confirmed that it had given consideration to section 40(1) of the FOIA to establish whether part of the information requested should be considered under section 7 of the DPA.
122. The Commissioner agrees with the council that some of the information requested is likely to be the personal data of the complainant's son who is now of an age and maturity where he is able to request this in his own right, should he wish to do so.
123. The Commissioner notes the complainant's argument that as he made the application to the school on behalf of his son and has previously been supplied with information that relates to him, he should continue to receive such information on his behalf.
124. At the time that the school application was made the complainant's son was only 10 years old. He was therefore still of an age where the complainant could be regarded to be acting in the best interests of his son and may have legitimately received information about him in response to his requests. However, once an individual is sufficiently mature to be able to understand their own rights of access, any rights of the parent to receive their personal information on their behalf under section 7 of the DPA will cease. This is regardless of when the information was created and whether the parent would have had a right to receive that information when the child was much younger.
125. Given the above, the Commissioner is of the view that the complainant does not have any right under the DPA to request information held that relates only to his son and that section 40(1) is not relevant. She therefore views the council's approach to consider section 14(1) to the request in its entirety to be correct.

## Right of appeal

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126. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

127. 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.

128. 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 .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex A

On 24 March 2017 the complainant made the following request for information under the FOIA:

*There are a number of questions, but they are fairly simple and I believe the questions can be answered in less than one hour.*

1. *Is it correct that formal responsibility for determining [school name redacted] student admissions in 2013 rested with the [school name redacted] governors? However, in discharging these responsibilities in relation to Year 7 the governors adopted the County Council's procedure for selective admissions? (3<sup>rd</sup> paragraph of admissions code in 2013).*
2. *Is it correct WCC has no record of any mechanism for [school name redacted] to take admissions back in house for 2013 as the admissions policy did not state there was? (Once published the policy cannot be changed and the school adopted the Council's procedures for selective admissions and there is no way to reverse it without permission from the Secretary for State- which was not obtained).*
3. *According to the County Council's procedure for selective admissions for 2013 if a future change in address is not accepted, then there was only one option-to reject future change in address and use the original address to process the application? There was no option to reject the application (especially once it had been accepted by WCC and a place offered). If not, what were the other options and provide documentary evidence)?*
4. *In essence in the case of [name redacted], if [school named redacted] rejected the future [address redacted] address all it could have done under the County Council's procedure for selective admissions was to use the original [address redacted] address for admissions. If so, is it correct [name redacted] would have been offered a place?*
5. *Is it correct every school applied for accepted [name redacted]'s future change of address, except [school name redacted]?*
6. *Is it correct that WCC refused to withdraw [name redacted]'s place on 4 occasions? If not then on how many occasions?*
7. *Did the Council's procedure for selective admissions allow [name redacted]'s place to be withdrawn?*
8. *Did [name redacted]'s application comply with the County Council's procedure for selective admissions?*

9. *Did WCC accept that the application for [name redacted] was not fraudulent (hence accepted the application)?*
10. *Did WCC accept that the application for [name redacted] was not misleading (hence accepted the application)?*
11. *I understand there was a meeting between [school name redacted] and WCC regarding [name redacted]'s place where WCC refused to withdraw the place. I understand [name redacted] was at the meeting for the school. Where was this meeting held and how many of [school name redacted] governors were at the school. Please name the Governors who attended.*
12. *Was it the legal view of WCC that withdrawal of [name redacted]'s place by [school name redacted] was unlawful?*
13. *Did WCC inform [identity of school redacted] that withdrawal of [name redacted]'s place was unlawful? If yes, on how many occasions?*
14. *Was it the view of WCC that [school name redacted] had to offer an appeal to [name redacted] and could not simply refuse to offer an appeal? Did they tell this to [school name redacted]? If so, who did they inform?*
15. *Was it the view of WCC that [school name redacted] could not simply reject an application and had to process it? Did they inform [school name redacted]. If so, who did they inform?*
16. *Was it the view of WCC that the application for [name redacted] to [school name redacted] was not fraudulent? Was [school name redacted] told, if so who?*
17. *Was it the view of WCC that it was impossible to determine if the application for [name redacted] was fraudulent until the first day of term, because only on that day could one determine whether a move had taken place. If so, did the [sic] inform [school name redacted] and if so, who?*
18. *Was it the view of WCC that refusal to place [name redacted] on the [school name redacted] waiting list was unlawful. Did WCC tell [school name redacted], and if so who?*
19. *Was WCC ([name redacted]) provided with documentary evidence of a move to [address redacted] by the first day of term?*
20. *Please confirm the average time it had taken [school name redacted] to process or consider an application for a place in 2013. Eg 1 day, 1 week.*

21. *State how long it took [school name redacted] to process the second application of [name redacted].*
22. *Who did WCC communicate with from [school name redacted] regarding [name redacted]'s place?*
23. *Who was the main point of contact at [school name redacted] for [name redacted]'s application?*
24. *Was the time period to consider [name redacted]'s second application significantly longer than any other child?*
25. *Was the school capable of processing the application immediately-stating the school was full and placing him on the waiting list? Was this expected under the County Council's procedure for selective admissions?*
26. *Did [name redacted] feel that the admissions issue may cause stress and anxiety to [name redacted] and his family and felt the decisions should be quick to avoid this (you may wish to check her emails). i.e. did she believe the threat if withdrawing a place would cause a reasonable person stress and anxiety?*
27. *On how many occasions in the last 10 years has (school name redacted) refused to process a school application (excluding [name redacted])?*
28. *On how many occasions in the last 10 years did [school name redacted] reject a school application (excluding [name redacted])?*
29. *On how many occasions in the last 10 years did [school name redacted] refuse to offer an appeal (excluding all incidents of [name redacted]).*
30. *Excluding [name redacted], on how many occasions in the last 10 years did [school name redacted] take back admissions inhouse for an individual applicant and on how many times was a place withdrawn?*
31. *How many families registered a change of address who were offered places at [school name redacted] in 2013? How many of these children had their places removed? How many had their addresses questioned by [school name redacted]?*