

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2023

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Decision (including any steps ordered)

1. The Commissioner's decision is that the complainant's requests for information associated with Holland Park School are vexatious requests under section 14(1) of FOIA and the Department for Education (DfE) is not obliged to comply with them.
2. It is not necessary for DfE to take any corrective steps.

Background and context

3. Holland Park School's board of governors had undertaken an investigation into the school in 2022 which found a culture of "fear, favouritism and inequality". It was decided that the school should join the United Learning multi-academy trust (MAT). This decision triggered protests by students and parents who threatened to issue governors with a judicial review. A subsequent legal challenge was dismissed, and Holland Park School formally joined the United Learning MAT in January 2023.

Request and response

4. The complainant made the following information request to DfE on 20 January 2023:

“I would like you to provide all email correspondence and papers pertaining to and/or referencing Holland Park School including with members of the school's Board of Governors, including but not limited to [redacted] etc. as well as [redacted] from 1/9/2021 up to and including today 20/1/2023.”
5. DfE refused this request under section 12 of FOIA, which concerns the cost of compliance.
6. The complainant submitted the following, refined, request to DfE on 17 March 2023:

“I would like you to provide all email correspondence pertaining to and/or referencing Holland Park School between your office and HPS’s Chair of the Board of Governors, [redacted] from 1/9/2021 up to and including today 3/17/2023.”
7. DfE also refused this request under section 12, and a third request it had received from the complainant on 9 February 2023 for a “robust school improvement plan” in relation to Holland Park School.
8. On 3 May 2023 DfE refused two further requests from the complainant under section 14(1) of FOIA. DfE had received one of these requests on 17 March 2023 (its reference 2023-0012157). That request is as follows:

“I would like to request any and all emails between your office and the RSC Dame Kate Dethridge referencing and relating to Holland Park School W8 London between the dates of July 1, 2021 and January 1, 2023 in accordance with the FOIA.”
9. DfE said it had received the second request on 29 March 2023. It was for the following information:

“I would like to formally request under the FOIA agreement mails between Regional Schools Commissioner’s office (London Regions Group) and former Holland Park School Chair of Governors [redacted] from 1/4/2022 up to and including today 29/3/2022.”
10. DfE gave this request the reference 2023-0014489 and, as above, categorised it as a vexatious request.

11. In its 3 May 2023 correspondence DfE also refused three other of the complainant's requests under section 14(1), one of which had the reference 2023-0012992.
12. The complainant submitted a separate complaint to the Commissioner about DfE's response reference 2023-0012992 and case reference IC-236735-J7L9 was opened to deal with that. The request in that case was submitted on 24 March 2023 and is as follows:

"I would like to request emails to and from [redacted] referencing and/or concerning Holland Park School in London W8 between 1/6/2021 and 1/2/2023.

Please have them to me no later than 21/4/2023 (20 working days"

13. On 25 April 2023 DfE wrote to the complainant again. DfE noted that at that point the complainant had contacted it 18 times since March 2022 outlining their concerns [about Holland Park School] and asking DfE to intervene. DfE noted it had replied each time with explanations including the routes to go down if the complainant had a complaint. Namely, if they had an issue with a school or academy, they should contact that school or academy. DfE said it believed there was now nothing more it could do to help the complainant with this issue.

Reasons for decision

14. In their complaint to the Commissioner reference IC-230939-Y5T4, the complainant summarised their correspondence with DfE above and singled out the request of 29 March 2023 as the focus of their concern (DfE reference 2023-0014489).
15. In their complaint to the Commissioner reference IC-236735-J7L9, the complainant focussed on the request of 24 March 2023 (DfE reference 2023-0012992).
16. Given that the two requests in question are on the same theme and that DfE has applied section 14(1) to both, the Commissioner has considered both complaints in this decision notice.
17. This reasoning therefore covers DfE's application of section 14(1) of FOIA to the complainant's requests of 29 March 2023 and 24 March 2023.
18. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.

19. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
20. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC):
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
21. The Commissioner will first look at the value of the requests as this is the main point in favour of the requests not being vexatious. He will then look at the negative impacts of the requests ie the three remaining themes of burden, motive, and harassment, before balancing the value of the requests against those negative impacts.
22. In its submission to the Commissioner dated 19 June 2023, DfE noted that the complainant has been in ongoing correspondence with it about United Learning Trust (ULT) becoming the academy sponsor for Holland Park School. By 19 June 2023, this had resulted in 24 pieces of correspondence being sent to DfE since 2 April 2022.
23. DfE says that the information the complainant has asked for has often been in a very similar vein. It includes information about email exchanges between named parties within specific timeframes, all relating to Holland Park School's sponsorship.
24. Their requests and correspondence are part of a broader campaign by parents, teachers and the National Education Union (NEU), who are opposed to ULT becoming the sponsor. This has resulted in DfE responding to over 300 FOIA requests/other correspondence about this matter since 2021.
25. DfE has noted that the school itself has experienced an extremely turbulent period over the last couple of years. In July 2021 it was at the centre of allegations from former staff and students about bullying and a toxic culture. Following an Ofsted inspection in April 2022, the school was subsequently judged inadequate.
26. The DfE-led process that resulted in the decision to move Holland Park School into a MAT was challenged by a group of parents and the NEU by judicial review. This found in DfE's favour in December 2022. Tensions have been high in the local community about this case, with different

stakeholders taking opposing positions, and much of this has been played out on social media. Students at the school were also impacted last year, due to 12 days of strike action relating to the transfer to a MAT.

27. However, and as has been noted, the school transferred to the MAT on 1 January 2023 and DfE says it is now in a better position. DfE's key focus in relation to Holland Park School is the continued stability of the school and the school being able to provide the best possible education for its students, rather than revisiting issues that have now been concluded at judicial review level.
28. DfE says that the school has also received significant media attention, including pieces in Schools Week, local press such as the Evening Standard and the national press including the Daily Mail and the Independent.
29. DfE doesn't consider that there is a legitimate interest or reason to continue these requests. It says this is particularly the case following the outcome of the judicial review and the history of the complainant's requests on the subject of Holland Park School.
30. DfE says that continuing to answer the complainant's requests would have a disproportionate impact on its resources. This is particularly so as the team tasked with this area of policy and FOI requests has limited resources. As such, DfE believes it's fair and appropriate to cite section 14(1) at this stage. It has noted the Commissioner's guidance on the impact on authorities' resources and ability to deliver key priorities and policy commitments:

"The ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself."
31. In DfE's case, these services include ensuring schools in need of an excellent Academy Sponsor receive an appropriate sponsor as quickly, effectively and efficiently as possible.
32. DfE says it rarely refuses requests as vexatious, and has considered the issues carefully, before applying it in this case. It believes that the requests being considered concern the sponsorship of Holland Park School, and local parents' objections to the selection of ULT as the school sponsor. The issues raised by those challenging this decision have, as mentioned, led to hundreds of pieces of correspondence to DfE, all of which DfE has responded to. The challenge also went to judicial

review in November 2022, with the Judge rejecting the claim made against DfE.

33. As DfE has received and responded to numerous requests asking for similar information over a prolonged period, and due to the outcome of the recent judicial review, DfE says it felt that it must make it clear that where it thought future requests were vexatious, it would no longer respond to the complainant's requests on this subject.
34. Given the history, DfE concluded that it is highly unlikely that the complainant will receive anything new from DfE from their continuing correspondence on this subject. Nor are they likely to be satisfied with any response that DfE is able to provide. However, DfE says, their continuing correspondence comes at a considerable and unjustifiable cost to the public purse.
35. DfE says it has considered the criteria as set out in the Commissioner's published guidance. In DfE's opinion, the requests meet a number of these conditions. DfE considers that the requests are aimed at taking up further departmental time and seeking further avenues for prolonging correspondence on requests that have now exhausted DfE's procedures and on matters that have been examined and rejected at judicial review.
36. DfE also considers that, given how frequently the complainant already submits FOI requests and other correspondence, responding to these requests would encourage them to submit further requests in order to maintain pressure on DfE. This is an established pattern of behaviour, and continuing to respond would place a significant strain on DfE's resources. It would contribute to that aggregated burden already identified above, and DfE believes this has now become a deliberate, systematic and consistent abuse of FOIA.
37. DfE concludes its submission by re-stating that it has responded to hundreds of enquiries, correspondence and requests for information on the matter of Holland Park School. It has released considerable amounts of information to the complainant and other interested parties. Holland Park School's move to a MAT has undergone independent scrutiny, with the issue rejected at judicial review. As such, DfE is clear that the "value or serious purpose" of the requests have been significantly reduced. The purpose of these requests is, in DfE's view, clearly aimed at prolonging a conversation with DfE on a subject that has now, although obviously not to the satisfaction of some parties, been resolved at judicial review.

The Commissioner's conclusion

38. On the face of it, the Commissioner would accept that the requests in this case have a value as they seek information that could help explain a significant decision that has been made about Holland Park School. However, given the background and context of the requests, the Commissioner considers that their value is diminished. At the point of the requests, Holland Park School had joined the ULT; that decision had been scrutinised through judicial review and the review had rejected the claim against DfE.
39. The cumulative burden to DfE caused by responding to the complainant's requests, and requests from others on the same subject, had been substantial up to that point, with hundreds of requests and queries having been addressed. Eighteen of these had been from the complainant up to the point of the requests under consideration. Moreover, the Commissioner will accept that by 24 March 2023 the complainant's requests amounted to a campaign against DfE. He has noted that in one of their complaints to him, the complainant has said:
- "I was refused this information on the 29th March on the grounds that the request was too broad. I then narrowed my request (While asking two other concerned parents to request the other dates so that between [t]he three of us our request would encompass the above information.)"
40. This suggests to the Commissioner that the complainant was motivated to work with others to circumvent the reasonable limitations FOIA places on requests in order to continue to burden DfE and to keep 'live' a matter that had to all intents and purposes concluded.
41. The cumulative effect of the complainant's requests is likely to have been to leave DfE staff feeling harassed – through both having to address the requests and because addressing the requests would distract them from delivering their mainstream services.
42. Having considered all the circumstances, the Commissioner is satisfied that at the point of the requests, their value did not justify the continuing burden to, and harassment of, DfE staff. The Commissioner's decision is therefore that DfE was entitled to refuse the two requests under section 14(1) of FOIA as the requests were vexatious.

Right of appeal

43. 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

44. 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.
45. 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
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