

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 December 2024

**Public Authority:** Office for Standards in Education, Children's Services and Skills (Ofsted)

**Address:** 2 Rivergate  
Temple Quay  
Bristol  
BS1 6EH

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about inspections. The above public authority ("the public authority") refused the request as vexatious.
2. The Commissioner's decision is that the public authority has not demonstrated that the request was vexatious and is therefore not entitled to rely on section 14(1) of FOIA to refuse it.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response, to the request, that does not rely on section 14(1) of FOIA.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 29 April 2024 the complainant requested information of the following description:

"Can you provide me with the names of each school and Academy inspected by Ofsted in the last 36 month's.

"Along with that request, please can you provide me with the names of each Inspector who inspected each individual school and Academy in the last 36 months.

"Please can you provide me with the number of online responses received by Parents and Guardians for each Academy and School against the total number of children attending each academy and school.

"Can you provide me with evidence of how Ofsted Inspector used submissions of evidence from parents to evaluate and influence the inspection of each school.

"Can Ofsted provide evidence of where Inspectors spoke or corresponded directly with parents and guardians of the school's and Academy's in the last 36 months as part of the inspection process, outside of the online submission process.

"Can you provide the amount of working hour's each Inspector spent in each school as part of the school inspection in the last 36 months.

"I would be grateful if you can provide me with a list of registered conflicts of interest recorded by each Ofsted inspector in the last 36 months."

6. On 14 May 2024, the public authority responded and refused the request as vexatious.
7. The complainant requested an internal review on 21 June 2024. The public authority had not completed a review at the date of this notice.

## Reasons for decision

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8. Section 14(1) of FOIA allows a public authority to refuse a request that is vexatious. A vexatious request is one that represents an unjustified or improper use of the process or which would require a disproportionate use of resources.

## **The public authority's position**

9. The public authority explained to the Commissioner that its dealings with the complainant had begun around five years ago, due to his dissatisfaction with the way a particular school had handled his concerns.
10. The complainant had attempted to involve the public authority on numerous occasions, particularly by copying it into correspondence he was having with other organisations. The public authority explained that, in 2021, it had asked the complainant to cease this practice, but he has failed to do so.
11. Since concerns were first raised, the public authority explained that it had conducted an inspection of the school concerned. The complainant was unhappy because, in his view, the school had failed to provide him with sufficient notice of the inspection to have allowed him to share his concerns fully and directly with inspectors. The public authority explained that, based on the correspondence it had received, it believed that the complainant now regarded it as having "conspired" in the school's alleged failure.
12. The public authority considered that there was a clear thread running between the original issues the complainant had raised (and which it had done its best to address) and the latest request. However the request also demonstrated that the complainant's focus was now drifting away from the original issues of substance towards matters of process.
13. The public authority noted that it had carried out 14,500 inspections during the time period covered by the request and therefore the burden of the request alone would be enough to render the request vexatious.
14. In summary, the public authority noted that:

"there seems to be a strong possibility this request was sent to annoy [our] staff and cause unnecessary vexation, or simply to make a (unnecessary) point related to his own experience.

"As well as the specific burden of this request we believe that, after 5 years and extensive correspondence, [our] ability to continue responding to [the complainant]'s requests on these subjects has now been exhausted. I am concerned that, in this time, he has not attempted to engage constructively with the responses he has been given, is intransigent in his views and has developed a habit of throwing out inaccurate allegations and misrepresenting what public authorities have previously said to him (sometimes in order to attract the attention of other public authorities)."

15. The public authority explained that it did hold “lots” of further detail about its correspondence, but that it would be “quite time-consuming” to have set it out before the Commissioner and that doing so would have undermined its use of the exemption.

### **The complainant’s position**

16. The Commissioner invited the complainant to make a submission, noting that the public authority’s main concerns appeared to be the burden of responding and the real motivation behind the request.
17. The complainant did not accept that his request represented a “drift” from his original concerns.
18. He did not address his earlier correspondence, or the burden it might have caused, but he did argue that, in his view, his request was not burdensome and that the public authority was likely to have compiled the data for other tasks – no evidence was provided to support such a view. In any case, the complainant argued, if his request was genuinely burdensome, he should have been provided with advice and assistance to help narrow it.
19. The complainant was of the view that publication of the requested information may not be in the “reputational interest” of the public authority, but that it was in the public interest.

### **The Commissioner’s view**

20. The Commissioner does not consider that the public authority has demonstrated that the exemption is engaged.
21. In every case the burden of proof lies with the public authority concerned to demonstrate why it has dealt with a request correctly.
22. Demonstrating section 14(1) of FOIA is and should be a high hurdle, as applying this exemption relieves a public authority of its obligation to confirm whether information is even held, let alone to consider what needs to be disclosed.
23. At the outset of his investigation, the Commissioner wrote to the public authority asking it to explain why it had relied on section 14(1). His letter stated the following:

“In order to demonstrate why you believe you are entitled to refuse the request, the Commissioner needs you to **set out why you believe the request is vexatious and provide appropriate evidence to back up your assertions...**[original emphasis]

"You are strongly advised to consult the Commissioner's [guidance on vexatious requests](#) when preparing your response. Where your submission makes assertions, the Commissioner **also expects those assertions to be backed up by appropriate evidence.** [emphasis added]

"It is for you to determine what evidence you wish to submit, but you should be aware that strong submissions are likely to include:

- A schedule of correspondence (highlighting information requests made). Please note that, if possible, your schedule should also demonstrate what response, if any, your organisation provided to the correspondence.
- Examples of any correspondence which demonstrates a rude, aggressive, threatening or otherwise inappropriate tone.
- Any relevant background to or underlying issue which prompted the request – in particular if that matter has been looked at by other bodies (eg. via a complaint or investigation by an external organisation)
- Any other evidence which you believe demonstrates why the request is vexatious

"Please note: should you provide inadequate submissions, **the Commissioner reserves his right to issue a decision notice finding that you are unable to rely on the exemption and ordering a fresh response.**" [original emphasis]

24. The public authority has put forward a strong narrative to explain why the request was vexatious. It does indicate that this request forms part of a wider grievance between the complainant and public authority. It also raises questions about the ongoing burden of dealing with the complainant's correspondence and about the true motive behind the request. Had it been supported by evidence, it is likely that the Commissioner's decision would have been different.
25. However, without any evidence whatsoever to back up that narrative, the Commissioner has no way of judging the extent to which the narrative accurately describes events.
26. The Commissioner considers that he set out clearly, to the public authority, the evidence that he would require in order to uphold its position and the likely outcome if it were not provided. It is for the public authority to decide what it wishes to provide and to balance competing resource demands – but it has to recognise the risks involved.

27. The public authority has not directed the Commissioner to any previous similar decision. Nor does its letter indicate that it has even relied on this exemption to refuse any of the complainant's previous requests. The Commissioner cannot accept that the complainant is acting unreasonably in bringing his complaint – he is entitled to a decision about whether the exemption applies. As far as the Commissioner is aware, this is the first time that he has had to consider section 14 in respect of this particular complainant and so the public authority is not having to re-provide information that he has already seen.
28. It is worth noting that the complainant hasn't disputed the public authority's characterisation of events – but he is under no obligation to demonstrate why his request was not vexatious. The burden of proof lies with the public authority to provide evidence to support its claims.
29. Such evidence as the public authority has provided does not meet the high bar to demonstrate that the request is vexatious.
30. Whilst the Commissioner is not persuaded that the request is vexatious, he has carefully and separately considered whether the request would impose a grossly oppressive burden such that section 14(1) would be engaged solely on that basis.
31. The Commissioner recognises that the public authority has pointed out that it has carried out at least 14,500 inspections during the time period covered by the request. Clearly, the public authority will only have to spend a very short length of time considering records relating to each of those inspections before the burden becomes substantial.
32. However, apart from the total figure of inspections, the Commissioner has been given no other data on which he could base a reasonable assessment of the burden.
33. The Commissioner has been given no indication of what information is either in the public domain (or could be derived from public records) – and what information the public authority would need to search its own records for. The public authority has asserted that the information would require redaction, but it's not clear what records would need redacting, what information would need redacting from those records or why redaction is necessary.
34. The public authority has provided no estimate of the burden of complying with the request. Given the lack of any certainty about most of the variables, the Commissioner is unable to produce a reliable estimate on his own. He notes that, in ordering a fresh response, the public authority will have the opportunity, in due course, to make more

detailed submissions about the cost of complying with the request, should it wish to do so.

35. The Commissioner is therefore not satisfied that the public authority has demonstrated that complying with the request would impose a grossly oppressive burden.
36. The Commissioner therefore finds that section 14(1) of FOIA is not engaged and the public authority must now provide a fresh response.

### **Other matters**

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37. The section 45 FOIA Code of Practice requires public authorities to carry out an internal review, where a requester is clearly dissatisfied with the response they have received to an information request.
38. The public authority failed to carry out an internal review of this request and, given that it seems to have been the first occasion on which it relied on section 14(1) of FOIA to refuse a request from the complainant, the Commissioner sees no good reason why it should not have done so on this occasion.
39. The Commissioner considers this to be poor practice.

## **Right of appeal**

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40. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**