

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2025

Public Authority: Aston Community Education Trust

Address: ACET House
66 Holderness Drive
Aston
Sheffield
South Yorkshire S26 2BH

Decision (including any steps ordered)

1. The complainant has requested from Aston Community Education Trust (ACET) information about letters sent to parents and carers of pupils and ex-pupils of Aston Academy that had been issued by Irwin Mitchell. ACET refused to provide the requested information, applying section 40(2) of FOIA – personal information – to one part of the request and section 14(1) of FOIA – vexatious request – to the remainder.
2. The Commissioner's decision is that the request is vexatious and ACET cited section 14(1) correctly. He has also decided that section 40(2) has been cited appropriately.
3. The Commissioner does not require further steps.

Request and response

4. On 23 July 2024 the complainant wrote to ACET and requested information in the following terms:

"We are requesting the following information in respect of letters dated on or, around June 10, 2024, sent to parents and carers of pupils and ex pupils of Aston Academy, Sheffield issued by Irwin Mitchell Leeds office pertaining to alleged ' . . . false statements intentionally leading to the lowering of the Trust's reputation in the

estimation of others . . . '

1. Who (which individual) commissioned/sanctioned/authorised said letters?
 2. How many such letters were issued, including all follow ups?
 3. How many instances of the alleged acts were formally identified?
 4. On which social media platforms, which specific groups or personal sites and on what dates did the formally identified acts occur?
 5. What was/is the total financial cost in legal fees incurred for the services of Irwin Mitchell specifically relating to this activity?
 6. What was the total annual expenditure on legal fees incurred by the Trust, with Irwin Mitchell for the last 3 financial periods?"
5. ACET responded on 25 September 2024 as follows: Point one of the request was refused under 40(2) of FOIA and points two to six refused under section 14(1) of FOIA.
6. ACET explained that it did not offer an internal review. An internal review is not mandatory under FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 10 October 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether ACET cited section 14(1) and 40(2) correctly.

Reasons for decision

Section 14(1) - vexatious request

9. The word "vexatious" is not defined in FOIA. However, as the Commissioner's [guidance](#) states, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
10. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is

an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

11. However, the Commissioner 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.
12. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield"). Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
13. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
15. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA." (paragraph 82)

ACET's view

16. Much of the argument that follows has previously been provided by ACET and is in the Commissioner's previous decision notice [IC-275872-H4J1](#).
17. ACET set out its arguments under three headings, the first being -
 - Details of the detrimental impact of complying with the request

The focus of the request "centred around who had made the decision to send legal letters via Irwin Mitchell to parents and carers of pupils and ex-pupils". The letters,

"pertained to alleged false statements intentionally leading to the lowering of the Trust's reputation. In addition, other information had been requested pertaining to legal costs in general paid to Irwin Mitchell in the last three financial periods."

ACET provided further supporting information by way of context that cannot be detailed here.

18. ACET stressed that its main priority was to safeguard children but that it also had "a duty of care to staff". Its opinion is that if it had complied with the request, the information was likely to have been shared "with a wider audience on public platforms". ACET explained that it had considered points two to six of the request "on their own merits" but ultimately decided that it could not provide any of the information as it "would lead to further disruption" and "further opportunities of discrediting the Trust". ACET suggested that, as the request had only asked for the "bottom-line figure for legal costs" for the last three financial periods and not "contextual financial data", the "harassing nature of requests would have continued, following receipt of the information".
19. • Why the impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value

ACET argued that providing information in response to this request had the -

"potential...to lead to more requests or dialogue of the same 'repetitious criticism of Aston Academy and ACET and rhetorical passive aggressive questions' as outlined in the letter from the Chair of ACET [to the complainant] and the detrimental toll this has already taken on staff".

20. ACET questioned whether any purpose would be served by providing the information as the complainant no longer had a connection to any of the Academy group. It believes that "the main purpose would be to cause further disruption, distress and work for colleagues who are there to support children across the trust". Before receiving the FOI request ACET did not receive any correspondence from parents and carers regarding the letters, though the request itself was signed "on behalf of multiple persons". This leads ACET "to believe that [the complainant] would have shared information publicly on social media platforms with numerous people".

21. • Details of the wider context and history

ACET explained to the Commissioner that “at the height of the complainant’s communication” with one of its academies there were 82 emails in 43 working days. It underpins its argument by pointing to [Betts vs ICO \(EA/2007/0109, 19 May 2008\)](#). The Commissioner’s section 14 guidance references this Tribunal case under “lack of value and purpose of the request (reopening issues that have been conclusively resolved)”. ACET argued that the request “on its own may be considered as simple but our own experience of the complainant is that providing this information would perhaps, inevitably, lead to further correspondence, requests and complaints”.

22. ACET contends that -

“this is a pattern of behaviour aimed at putting unnecessary pressure on Senior Leaders within the trust (who the complainant has referred to as ‘toxic’ on social media platforms) and causing distress with the obsessive, harassing nature and frequency of the requests”.

ACET supports its contention by stating that when it has previously complied with FOI requests it has found that the information was “used out of context and without the supporting facts on social media platforms in order to discredit the Academy”. ACET provided an example

“where the complainant had requested details of the teaching supply agency budget for Aston Academy over a 4-year period. This raw data was quoted in isolation on social media with no context (for example, what percentage of the total budget the figure represented and whether the supply was required due to ongoing job vacancies or sickness absence)”.

No contextual information had been requested “only the bottom-line figure which appeared to suit the narrative of the complainant at the time. To discredit the Academy and the trust”. ACET argues that points five and six of the request for the expenditure on legal services “suggests that they [the complainant] would post this data without any context whatsoever”. However, it states that “ACET is no different to any other Multi-Academy Trust who contract legal services as part of its ongoing operations”.

23. In support of its position that the request is vexatious, ACET drew the Commissioner’s attention to a previous complaint case where the same complainant had said that they did not receive the information sent by ACET. In response to the complaint to the ICO that they had not received the requested information from an email sent on 4 October 2023, ACET provided the Royal Mail tracking number to the

Commissioner and evidence of delivery. This was then emailed to the complainant by the ICO. The letter had been sent by post "to avoid any ongoing dialogue in recognition of the parameters for any future contact set out in the letter from the Chair of the Trust".

24. The complainant made a duplicate request to Swinton Academy "approximately two weeks later...for exactly the same information (same dates, same information)". The complainant had been advised that the information was available on all the senior academy websites in the response they "had received twice already, once from ACET and subsequently from the ICO". ACET subsequently issued a refusal notice, citing section 14(2). This was followed by a further complaint to the ICO about the non-provision of the requested information. ACET provided evidence of both the responses (December 2023 and February 2024). ACET states that this -

"represents a small snapshot of the time and effort ACET staff are having to devote to dealing with what feels like a bombardment of requests, some of which are duplicates, when this would be better spent educating, safeguarding and supporting the 5000+ students and families we serve across the trust".

25. This duplication of complaints occurred again on 30 January 2024 when ACET was informed by the ICO that the complainant had not had a response to a request made on 8 November 2023. This transpired to be a duplicate case as ACET had already been informed of a complaint about its handling of this request and confirmed to the Commissioner that this was the only FOI request it had received on that date.
26. This case IC-275872-H4J1 was subsequently investigated and the decision made that ACET had cited section 14(1) correctly. ACET sees this as "another example of time and resources taken up by dealing with multiple requests/complaints/duplicate requests from the complainant".
27. The complainant submitted another information request on 27 February 2024 pertaining to the financial details of the trust INSET Day held on 4th September 2023". ACET also "deemed this request to be vexatious and responded accordingly and within the mandatory timescales".
28. The request that is the subject of this decision notice "arrived on the last day of the summer term" which ACET suggests was -

"timed, we feel, in order to have maximum detrimental impact on staff's Summer break: the legal letters having been sent in June 2024) and have once again had to devote valuable time and effort into collating all of the information and completing the risk assessment and this response to provide justification of our refusal to comply with yet another request".

This diversion of resources “has impacted on the vital work required” in ACET’s local area and management of “many aspects of serious safeguarding content with our young people which have featured heavily in the media recently...”

The complainant’s view

29. The complainant originally complained to the Commissioner that an internal review had not been carried out by ACET. The Commissioner subsequently wrote and explained that an internal review was not a statutory requirement and asked if the complainant wanted him to consider the citing of section 14(1). The complainant responded “yes. they are corrupt”.

The Commissioner’s view

30. The Commissioner is mindful in his guidance [Dealing with vexatious requests](#) that when considering the application of section 14, it is the request itself that is vexatious and not the person making it. However, in such cases it is also important to consider the context of the request and the history of a public authority’s relationship with the requester.
31. ACET has stressed its attempts to consider each request on its merits. It also made the decision that it would not cite section 14 for the entire request to underline its commitment to engaging with each point of the request, rather than a blanket section 14 refusal. Whilst the Commissioner does not want to deter public authorities from this kind of careful analysis when refusing a request, his view is that part one of the request was the focus of the request from which the remaining parts stemmed and therefore it was likely to be just as vexatious as the remainder.
32. It seems clear that if ACET had responded to this request it would be unlikely to conclude matters or content the complainant. The Commissioner is persuaded that if information had been provided it was likely to lead to further requests. The Commissioner notes that he has issued a decision on a similar case involving the same complainant and ACET. He accepts that there is a history here that led to the FOI requests and this request appears to be an attempt to maintain a grievance via the legislation. However, it is now placing a burden that is draining ACET’s resources without having a wider public value. The Commissioner has therefore decided that section 14(1) has been correctly cited as the request is vexatious.

Section 40(2) – personal information

33. ACET applied section 40(2) of FOIA solely to part one of the request:
“ 1. Who (which individual) commissioned/sanctioned/authorised said letters?”

34. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
35. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (the DP principles), as set out in Article 5 of the UK General Data Protection Regulation (UKGDPR).
36. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (DPA). If it is not personal data then section 40 of FOIA cannot apply.
37. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

38. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
39. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
40. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
41. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
42. Clearly part one of the request is for personal information as it asks "Who (which individual)". This seems to require a name/s in response. Even if job role/s was an alternative it would be likely to lead to easy identification.
43. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
44. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

45. The most relevant DP principle in this case is principle (a)

Would disclosure contravene principle (a)?

46. Article 5(1)(a) of the UK GDPR states that: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

47. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

48. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

49. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.

50. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child".

51. The Commissioner considers that the lawful basis most likely to be relevant in relation to a request for information under the FOIA is Article 6(1)(f); legitimate interests. In considering the application of this provision in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- i. Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
- ii. Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii. Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

52. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

53. In considering any legitimate interests in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
54. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden.

Is disclosure necessary?

55. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
56. The complainant has not identified any legitimate interest in this information beyond their contention that ACET is "corrupt" but it is clear that disclosure is necessary for their own interests. It is not a trivial interest but the Commissioner does not consider it to be compelling either.
57. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

58. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
59. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;

- whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
60. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
61. The Chair of ACET wrote to the complainant in November 2023 to request that they refrain from harassing staff. Disclosure of the requested information would be likely to result in unwarranted damage or distress to staff. ACET does not have consent to share this information, it conducted its own internal risk assessment and concluded that it did not have any lawful basis to share this information. ACET's view is that releasing this information would lead to "discrediting senior leaders within the Trust", given the context and history. For this reason the Commissioner has not considered (as he generally would) the level of seniority or the professional role of the individual/s concerned.
62. There has been an "irretrievable breakdown of the relationship between the complainant" and ACET. The breakdown is represented by the letter the Chair wrote to the complainant advising that "no member of the ACET community would be communicating" with them "due to the harassing nature" of their conduct.
63. The Commissioner has been provided with some supporting information that cannot be included in this decision but it has been factored into why he has concluded that the rights of the data subject/s outweigh any legitimate interests in disclosure, in this instance. The Commissioner has concluded that it would be beyond the reasonable expectations of the individual/s concerned that this information would be disclosed and is likely to cause distress were it to be provided.
64. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject/s' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
65. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

Right of appeal

66. 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

67. 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.
68. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF