

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 November 2014

**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 on school waiting lists and the allocation of school places in Warwickshire. Warwickshire County Council ("the Council") refused to respond to the request as it considered it to be vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the Council correctly applied the provisions of section 14(1) to refuse the request.

### Request and response

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3. On 2 April 2014, the complainant wrote to Warwickshire County Council ("the Council") and requested information in the following terms:  
  
*"Please provide me with the number of offers made from the waiting list for 2013 entry for: LSS, RHS, Ashlawn selective, K.E.S., A.G.S.  
  
Also provide me with the number of offers made from the waiting list so far for 2014 entry at the above grammar schools and if possible the waiting list scores."*
4. The Council responded on 2 May 2014. It stated that as well as the request outlined above, it had also received two further requests under the FOIA on 2 April, a request on 8 April and a request on 10 April. It confirmed it would not be responding to any of these requests as it considered them vexatious.

5. Following an internal review the Council wrote to the complainant on 5 June 2014. It stated that it upheld the decision to refuse to respond to the request on the basis it was vexatious and therefore section 14(1) of the FOIA was engaged.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 6 June 2014 to complain about the way his request for information had been handled. In particular he disagreed that his requests were vexatious and considered them to be reasonable questions that would be answered if asked by any other person.
7. The Commissioner considers the scope of his investigation to be to determine if the Council has correctly refused the request as vexatious. In doing so he has focused on the first request made on 2 April 2014 despite the Council having issued a refusal notice and internal review covering all of the 2 April requests and the subsequent requests.

### **Reasons for decision**

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8. 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.
9. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious 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.
10. 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) the harassment or distress of and to staff. 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 request."* (paragraph 45).

11. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. 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 a case will need to be considered in reaching a judgement as to whether a request is vexatious.
13. The Council has identified several indicators as being present within the request. It has provided arguments that the request was obsessive, was designed to cause disruption or annoyance, was creating a burden on the public authority and it was causing a disproportionate effort to respond to. The Commissioner has considered each of these factors.

### **Obsessive request**

14. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
15. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long

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[http://www.ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.

16. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
17. In this case, the Council has explained that the complainant has been engaged in correspondence about issues relating to his son's education and to the way in which the 11 plus examinations are conducted in Warwickshire, including waiting lists and the allocation of grammar school places, for an 18 month period. As well as general correspondence on these issues, the complainant has also made a number of requests under the Data Protection Act 1998 and requests under the FOIA.
18. The Council have listed the requests made during this period:
  - 26 October 2012
  - 22 November 2012
  - 9 July 2013 – 2 requests
  - 1 August 2013
  - 22 August 2013
  - 23 August 2013
  - 23 September 2013
  - 31 October 2013
  - 11 February 2014
  - 26 February 2014
  - 18 March 2014
  - 2 April 2014 – 3 requests
19. The Council acknowledges that this may not seem like a significant number of requests when considered alongside the number of requests it receives each year but each request contains multiple questions and has to be considered alongside the other correspondence that is sent to the Council which is of a high volume.
20. The Commissioner accepts that the volume of correspondence, including information requests is persistent. It is clear that responding to one request has not resolved the matter and has led to further requests for information. The request which is the focus of this decision notice was followed up by two further requests on the same day.

21. The complainant has argued that his requests contain specific questions to “find the truth” in relation to waiting lists and admissions processes. The complainant also runs an 11+ information site so states he asks questions to be able to put information about the exams into the public domain. He also argues that his requests are entirely separate from any other ongoing disputes with the Council.
22. The Commissioner has not been provided with examples of the correspondence other than FOI requests between the complainant and the Council so cannot comment on the differences between these types of correspondence. However, he notes that the nature of these enquiries is on a similar theme; the 11+ examinations in Warwickshire and the admissions processes.
23. The Commissioner is aware that the Local Government Ombudsman has been involved in a dispute between the Council and the complainant, issuing his findings in March 2014. As well as this, the Council has applied for an injunction and has filed harassment charges. Despite this, the complainant has continued to interact with the Council both via FOI requests and in general correspondence. The issue of whether the nature of the requests is causing disruption or annoyance or creating a burden will be addressed in other sections of this notice but in terms of whether the request is obsessive in nature the Commissioner is minded to accept that the request does have the characteristics of an obsessive request.
24. It is clear that the issues between the Council and the complainant have been ongoing for some time and do not appear to be at a stage where they will be resolved soon. Other bodies have been involved and have made decisions but this has not led to a resolution. The Council believes the complainant will never be satisfied with the outcome of any information provided and will continually ask questions for the sole purpose of reopening the debate and reopening issues which have already been reviewed by the Council.
25. The Commissioner acknowledges that the persistent requests are being made despite the fact that the Council has made every effort to respond to the requests and correspondence and regardless of previous responses that have been sent. The Commissioner therefore accepts that the continued requests to the Council, taking into account the context and background to the request, have reached the stage where they can reasonably be described as obsessive.

### **Burden of the request and the disruption to the public authority**

26. The Council has explained that due to the volume of correspondence and requests from the complainant it has taken the step of allocating a

single point of contact to respond to correspondence in order to minimise the impact on various members of staff in several departments within the Council. The requests have placed a strain on the Council and it states the frequency, volume and nature of the correspondence has reached "an unreasonable and disproportionate level which can longer be considered reasonable".

27. The complainant has argued that his correspondence, particularly his information requests, are not excessive or unreasonable and the information should be easily provided by the Council. The complainant has also argued that the requests do not single out individual employees or seek to place blame so are not unreasonable and cannot be said to be burdensome or creating a disruption to the Council to respond.
28. The Commissioner acknowledges that the requests that he has seen are not particularly lengthy and do not appear to be asking for large volumes of information. However, the Council has argued that it is not necessarily the requests that are the issue but often the follow-up correspondence. For example, the request for an internal review in this case was eight pages long and suggested the Council had refused to respond to requests as "an act of revenge". The Council has highlighted the language used in responses to the Council and has referenced one example on 4 April 2014 of a response to an internal review in which the complainant included a statement referring to the author of the reviews out of work interests which the Council believes could only have been obtained by the complainant conducting an internet search against that person's name.
29. In addition to this the Council has stated that in many items of correspondence the complainant has made it clear that he wants a high profile public court battle and has stated that "a war must be fought". The complainant has also published information relating to the 11+ examination questions on his website and has actively encouraged pupils to cheat with the intention of compromising the integrity of the examination.
30. The Commissioner has considered these points and can clearly see that the requests sent by the complainant are not lengthy and are unlikely to require considerable time to provide responses to. He notes the complainant's assertions that the information should be easily available and this may well be true but there is no argument from the Council that the information is not held or that it cannot be provided, the argument is that it would create a burden and cause disruption.
31. This appears to be based on the time taken to deal with the follow-up correspondence resulting in the Council's response to requests and the nature of this correspondence. The Commissioner has accepted this is

relevant as this is often still part of the process of dealing with the information request, for example when the complainant has targeted individual members of staff following internal reviews of decisions.

32. For this reason, the Commissioner accepts that responding to this request would cause disruption or annoyance as in previous cases the complainant has been unhappy with responses to requests and has persisted with correspondence to the Council which has, at times, been accusatory and caused distress to a member of staff. The Commissioner is mindful that he must focus on whether the disruption or annoyance would occur through the process of complying with the request, not by considering whether disruption would occur if the information were released. Taking this into account, he accepts that the process of responding to the request would be likely to lead to disruption based on the pattern of previous correspondence.
33. However, the Commissioner does not accept that there is a burden on the public authority's resources in responding to these requests and continuing to do so, particularly if the information is readily available. There may be an unreasonable burden on the Council in responding to the correspondence as a whole from the complainant and this is reflected in the decision to appoint a single point of contact to deal with all contact from the complainant. However, the Council has not sufficiently demonstrated that the effect of dealing with the requests alone would be particularly burdensome.

### **Disproportionate effort**

34. When assessing whether a request or the impact of dealing with a request is justified and proportionate the Commissioner considers it helpful to assess the purpose and value of the request.
35. The Council has already shown that there have been a number of requests from the complainant on similar related subjects as well as other correspondence. The Council has acknowledged that the complainant has a legitimate interest in the 11+ examinations in Warwickshire and how school places are allocated but considers that the number of requests on the same theme has reached a point where it is no longer reasonable for the Council to expend further resources on dealing with the requests.
36. It is the Commissioner's view that the complainant did have a serious purpose to his requests when asking for information about the examinations and the allocation of school places but that this has lessened over time as requests have been responded to and further requests have continued to be sent. In addition to this, there has been a review by the Local Government Ombudsman into whether the Council



were responsible for any failings in the complainant's particular case about the allocation of school places and since the conclusion of this the requests have continued to be sent.

37. Therefore the Council considers that due to the complainant's general dissatisfaction about how the 11+ examinations are conducted, the allocation of school places and the persistence he has demonstrated that the complainant will never be satisfied with the outcome of any information provided and will continue to ask questions to reopen the debate on these issues.
38. The Commissioner does acknowledge there is persistence to the requests and that this may be considered when determining if responding to the request would constitute a disproportionate effort but this must also be considered alongside any value to the requests, specifically any wider public interest there may be in the information.
39. The Council has argued that there is no wider public interest to be found in the requests regarding the allocation of places and confirmation as to whether the Council would allocate places in various circumstances. The complainant has argued that this information is information he has been asked for by visitors and users to his website on the 11+ examination so is in the public interest and therefore the requests do have serious purpose or value. However, the Council argues that the complainant has published information on the 11+ examinations and questions on his website and encouraged pupils to cheat and compromise the integrity of the examination. As a result the Council has obtained an interim injunction to prevent the complainant continuing to publish this information.
40. Having considered all the information provided by both parties it is difficult for the Commissioner to conclude whether there is a wider public interest in the information that may result from these requests. On the one hand it seems unlikely that new information will result from requests which continue to be on the same theme but on the other hand the complainant has argued this information is useful for his website. Contrary to this the Council argues the website is being used to undermine its examinations.
41. The Commissioner can only draw his conclusions based on the fact that any serious purpose or value to the requests has diminished over time as the correspondence and requests have continued. The Commissioner is also minded to accept the arguments from the Council that any further responses will not resolve the issue and will only serve to reopen points which have already been addressed. Whilst the Commissioner has already explained why he does not consider there to be a significant burden in terms of time and resources in dealing with the requests due



to the, mostly, short and succinct nature of the requests; he still considers that the Council has demonstrated that the requests and correspondence have reached a point where it is no longer reasonable for the Council to expend further resources, regardless of how much, on dealing with the requests.

## **Conclusion**

42. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the Council was correct to find the request vexatious. He is satisfied that the request is obsessive and may cause disruption and there is a lack of serious purpose and, as such, the effort in dealing with the request would be disproportionate. The Commissioner therefore finds that section 14(1) has been applied correctly in this case.

## Right of appeal

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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: 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)

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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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