

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2020

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

Address: Piccadilly Gate
Store Street
Manchester M1 2WD

Decision (including any steps ordered)

1. The complainant has requested information associated with a concluded investigation about a childminder. Ofsted has categorised the request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is as follows:
 - The complainant's request is vexatious and Ofsted is not obliged to comply with it.
3. The Commissioner does not require Ofsted to take any remedial steps.

Request and response

4. On 30 July 2019 the complainant wrote to Ofsted and requested information in the following terms:

"Had Ofsted been made aware either written or verbally prior to the 10th September 2012 of circumstances contained within my E-mail happening before my E-mail was received by Ofsted on 10th September 2012 @ 08:51am."

5. Ofsted responded on 6 August 2019. It refused to comply with the request which it considered to be vexatious under section 14(1) of the FOIA. In the circumstances, Ofsted did not offer to carry out an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 6 September 2019 to complain about the way their request for information had been handled.
7. The Commissioner's investigation has focussed on whether Ofsted can rely on section 14(1) of the FOIA to refuse to comply with the complainant's request.

Reasons for decision

Section 14– vexatious and repeat requests

8. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
9. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
10. 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.
11. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified

level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

12. Where relevant, public authorities also need to consider wider factors such as the background and history of the request.
13. Ofsted has provided the Commissioner with a background to the request. It says that the complainant has been corresponding with Ofsted on the broad issue of their neighbour's work as a childminder in her own home for 10 years now. Over the past few months they have returned to this line of enquiry again, through multiple avenues both directly and through their MP.
14. Ofsted provided the Commissioner with some of its past correspondence with the complainant. It noted that in this correspondence it is evident that the complainant themselves made Ofsted aware of a Restraining Order limiting their actions in relation to their neighbour(s). Without being fully aware of the details surrounding the order, Ofsted says it has concerns that disclosing information to the complainant related to their neighbour may not be in accordance with the prior wishes of the court.
15. Notwithstanding the Restraining Order and the complainant's relationship with the subject of their requests, Ofsted says it would not usually provide such information to any member of the public as it considers it to be the personal data of the childminder and her family. Ofsted says it has told the complainant this on multiple occasions.
16. Ofsted has provided the Commissioner with three pieces of correspondence that concern the complainant. The first is from Ofsted to the complainant and is dated 23 September 2014. It is a refusal under section 14(1) regarding a request the complainant had submitted for information again associated with the childminder. In this correspondence Ofsted advised it was relying on section 14(1) for the following reasons:
 - The complainant had been corresponding with Ofsted about the suitability of an individual childminder and members of their household since early 2010.
 - Ofsted had investigated the complainant's concerns on a number of occasions and the childminder remained registered with the Ofsted.
 - The complainant's request was an attempt to re-open this issue which its regulatory team had conclusively addressed.

- The complainant's request was futile and responding to it would cause Ofsted a disproportionate disruption.
17. The second piece of correspondence is again from Ofsted and is dated 17 July 2017. It is an internal review in which Ofsted maintained its reliance on section 14(1) to refuse to comply with another request from the complainant; again about the childminder. As well as repeating some of the points it made in the above letter, in this correspondence Ofsted advised it was relying on section 14(1) for the following reasons:
- The complainant had advised Ofsted that they had a Restraining Order concerned with "making unfounded accusations against" the childminder in question.
 - The complainant's request would potentially contravene that Restraining Order in that it may form part of, or lead to, harassment of the childminder.
18. In the final piece of correspondence, which is to Ofsted and is dated 10 July 2019, the complainant advises that they still intend to pursue their concerns about the childminder in question.
19. Ofsted has told the Commissioner that this correspondence does not present the full picture and that there has been a lot of correspondence with the complainant prior to the current request.

Conclusion

20. Ofsted has investigated the complainant's concerns about a particular childminder and that investigation is concluded. It is clear to the Commissioner that the complainant continues to conduct a campaign against that childminder that, at the point of the request, they had been running for approximately nine years. That this resulted in a Restraining Order for the complainant is evidence of the hostility of the complainant's behaviour towards the childminder.
21. As well as being an attempt to re-open matters that have been concluded, the Commissioner is satisfied that the complainant's request to Ofsted – their attempt to glean information associated with the childminder – is part of their ongoing campaign and may be used to harass the individual concerned. Clearly, this is not an appropriate use of the FOIA. The Commissioner has decided that Ofsted is correct to categorise the complainant's latest request as vexatious under section 14(1) of the FOIA and to refuse to comply with it.

Right of appeal

22. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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
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Wycliffe House
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SK9 5AF