

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2018

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

Decision (including any steps ordered)

1. The complainant has requested information associated with the Teachers' Additional Voluntary Contributions (AVC) scheme and a particular contract the Department for Education (DfE/'the department') has with Prudential. DfE has categorised the requests as vexatious under section 14(1) of the FOIA, and as repeat requests under section 14(2).
2. The Commissioner's decision is that the complainant's requests are vexatious under section 14(1) of the FOIA and DfE is not obliged to comply with them.
3. The Commissioner does not require DfE to take any steps to ensure compliance with the legislation.

Request and response

4. On 9 January 2018 the complainant wrote to DfE and requested information in the following terms:

"1 Documentation that shows that the Teachers AVC and Superannuation Regulations are lawful documents for complaints to the ombudsman service

2 Proof that the DfE Contract has been fully, and rigorously investigated to check that Prudential were / are adhering to it (this is over and above the limited monthly self-reports made by Prudential, which I noticed didn't appear to be accurately reported).

3 Evidence documentation that DfE lawyers produced the Contract and had regard for complaints of mis-selling in line with the general public AVC Regulations

4 Evidence documentation that the DfE Contract required adherence to the AVC Regulations – these being mirrors of these Regulations

5 Evidence documentation that the DfE were aware that legal discrepancies existed with the Contract barring Teachers from making complaints against Prudential"

5. DfE responded on 6 February 2018. It said it does not hold information within the scope of requests 1, 3, 4 and 5 and said it had previously provided the complainant with information within the scope of request 2. DfE provided extracts from the contract in question which it considered had some relevance to requests 3, 4 and 5.
6. On 6 February 2018 the complainant wrote to DfE about its response and DfE replied to this correspondence on 28 February 2018. It now relied on sections 14(1) and 14(2) to refuse to comply with the complainant's requests.
7. The complainant then requested an internal review (date not provided) and DfE provided a review on 23 March 2018. It confirmed that its categorisation of the complainant's requests as vexatious/repeat requests was appropriate.

Scope of the case

8. The complainant first contacted the Commissioner on 5 March 2018 to complain about the way his requests for information had been handled.
9. The Commissioner's investigation has focussed on DfE's categorisation of the complainant's requests as vexatious under section 14(1) of the FOIA and, if necessary, as repeat requests under section 14(2).

Reasons for decision

Section 14 – vexatious or repeat requests

10. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request under the FOIA if the request is vexatious.
11. 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
12. 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 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.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
15. In its submission to the Commissioner, DfE confirmed that it did initially provide a response to the requests, on 6 February 2018. It had told the complainant that some of the information does not exist and so it was unable to provide it to him. Other information – whilst not in existence

in the exact format requested, DfE felt was covered by aspects of a contract with the Prudential, and it therefore tried to be as helpful as it was able. DfE has provided the Commissioner with a copy of the previous correspondence it had sent to the complainant dated 5 October 2015 which, DfE says, highlights that it had already replied to similar requests.

16. DfE has then told the Commissioner that, as a result of this, and on the same day as it sent the response ie 6 February 2018, the complainant emailed the department and his MP. DfE says that through this email the complainant was requesting exactly the same information as on 9 January 2018. In the Commissioner's view, having reviewed the email in question, the complainant's email is simply a request for DfE to reconsider its response to his request of 9 January 2018. However, DfE has noted that it was at that point that it chose to invoke section 14(1) and it advised the complainant accordingly on 28 February 2018, maintaining this position in its internal review in March.
17. DfE says it has revisited its response to the complainant's requests as a result of his complaint to the Commissioner and has confirmed that it continues to hold the view that its response to the complainant's email of 6 February 2018 correctly invoked section 14(1).

Background and context

18. DfE has told the Commissioner that the complainant has been corresponding with it (and other organisations) about his Teachers' AVC annuity since 2011.
19. It says that the complainant has had a complaint about his AVC dealt with through the Internal Dispute Resolution Process by the department, his complaint processed by Prudential and had his complaint heard by the Pensions Ombudsman. In 2012, the Ombudsman considered the complainant's complaint about the advice given to him by Prudential; his complaint of mis-selling; as well as his complaint about the general performance of his AVC fund and his complaint about the process for claiming his annuity and the annuity paid. The Ombudsman did not uphold any of the complainant's complaints.
20. DfE has noted that the complainant also complained to the Commissioner in 2016 – FS50635347¹. That decision concerned a series

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624860/fs50635347.pdf>

of requests that also concerned information about the Teachers' AVC including information associated with the Prudential contract. In that instance, the Commissioner upheld DfE's position that, under section 1 of the FOIA, the information requested was not held by the department.

21. DfE says it is confident that the complainant has exhausted the departmental complaints routes open to him, although it understands that he has now taken the matter to the Financial Ombudsman. His appeal was turned down by a senior investigator, but the complainant requested the decision be reviewed by the Ombudsman. DfE does not yet know the outcome of that investigation.
 22. According to DfE, despite exhausting the departmental complaints process in 2011 and receiving the Ombudsman's decision in December 2012, the complainant has continued to be a frequent correspondent with DfE (and other organisations) on the subject of his AVC. Since 2013, the complainant has written in excess of 30 letters, emails, FOI requests and two subject access requests to the department on this subject. He has also written to several other organisations, including the Prudential and his local MP.
 23. DfE has noted the Commissioner's guidance on the application of section 14, and the Commissioner's advice that *'Whilst public authorities should think carefully before refusing a request as vexatious they should not regard section 14(1) as something which is only to be applied in the most extreme of circumstances.'*
 24. DfE says it rarely refuses requests on this basis, and has considered the issues carefully, before applying it in this case. The department believes that the request made on 6 February 2018 was exactly the same as the earlier request made on 9 January 2018; and that the 9 January 2018 request was very similar to previous requests. Because the department has received several requests asking for similar information over a prolonged period, DfE says it felt that it must make it clear that where it thought future requests were repetitive and/or vexatious, it would no longer respond to the complainant. Specifically it refused to reply to his FOI request dated 6 February on those grounds in its letter of 28 February 2018.
 25. The complainant complained to the department and an independent review of his case took place. In the Commissioner's view this was a further review, as she considers that the 28 February 2018
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correspondence could have been categorised as an internal review. However, the review DfE went on to provide on 23 March 2018 concluded that invoking section 14(1) in that instance was appropriate. The letter to the complainant also emphasised that it was not the complainant himself that was being described as "vexatious", as his letter of complaint had suggested, but his correspondence.

26. DfE says that the complainant's repeated requests for information that has been provided to him previously represents a considerable burden in terms of time and resource, as highlighted in the number of times he has contacted the department in relation to his AVC.
27. Given this history, the department says it has concluded that it is highly unlikely that the complainant will receive anything new from the department from his continuing correspondence on this subject, or will be satisfied with any response that the department is able to provide. DfE says his continuing correspondence comes at a considerable and unjustifiable cost to the public purse.
28. DfE has considered the criteria for vexatiousness as set out in the Commissioner's guidance and it is of the opinion that the requests meet a number of these criteria. DfE considers that the 6 February 2018 request is aimed at taking-up further departmental time and seeking further avenues for prolonging correspondence on requests that have now exhausted departmental procedures.
29. DfE also considers that, given the frequency with which the complainant already submits FOI requests and other correspondence, responding to his request would encourage him to submit further requests in order to maintain pressure on the department. DfE says this is an established pattern of behaviour. It says it would place a significant strain on its resources and contribute to that aggregated burden already identified above, and has now become a deliberate, systematic and consistent abuse of the FOI Act.
30. In the remainder of its submission, DfE has set out in more detail why it considers the complainant's requests meet the criteria for vexatiousness in the Commissioner's published guidance, and which are given above. The Commissioner does not intend to reproduce those arguments in this notice or discuss them in detail. She has noted however that the complainant has been corresponding with DfE about his AVC since 2011 and has contacted the department in excess of 30 different occasions in relation to his AVC. The Commissioner has noted that the complainant has told her that it is not correct that he went through DfE's Independent Review Dispute Process. However DfE has told her that the complainant *did* go through that Process and that, in addition, his concerns have been considered by the Pensions Ombudsman. The

Pensions Ombudsman did not uphold any of the complainant's complaints.

31. In correspondence to the Commissioner the complainant has disputed that his requests are vexatious because he did not make any requests for nearly two years. He has told the Commissioner that the questions on this occasion were generated out of his contact with the Financial Ombudsman, and that he was seeking clarification that he could not obtain elsewhere.
32. The complainant says that because DfE refuses to communicate with him through normal channels this has forced him to use the FOIA. He has suggested it is wrong of DfE then to complain when he is asking genuine questions to help his case, or to complain about his high volume of correspondence – because in his view that is entirely DfE's fault.
33. Following information released to him as a result of a subject access request to the department, the complainant has indicated that he considers that DfE has categorised him as an individual as vexatious and that it is carrying out actions that are a personal attack on him.
34. The Commissioner has noted DfE's review response of 23 March 2018 in which it clearly states that it has categorised the complainant's requests as vexatious, *not* the complainant himself. In addition, in that review response DfE indicated that it would be prepared to respond to requests from the complainant for different information. The Commissioner has noted that DfE went on to release information to the complainant on 29 March 2018, in response to a new request he had submitted on 12 March 2018. In light of this, the Commissioner does not accept that DfE is treating the complainant at all unfairly.
35. Although it is more than is usual, the Commissioner does not consider 30 items of correspondence – including some FOI and subject access requests - from the complainant to DfE, from 2011 to January 2018, to be an especially high volume. It is, nonetheless, a long time over which to be corresponding about the same matter. The Commissioner notes that the matter of the complainant's AVC, which is the complainant's principal concern, has been considered by appropriate bodies and dealt with – his complaints have not been upheld. It appears to the Commissioner that the complainant is nonetheless seeking to maintain a correspondence with DfE about this matter, and to keep open what is effectively a closed matter. The Commissioner considers that this could be for the purpose of exerting pressure on DfE in the hope that his concerns regarding his AVC will be re-considered and ultimately result in an outcome that the complainant considers is more satisfactory.

36. The complainant says he is seeking clarification on particular areas as a result of his contact with the Financial Ombudsman. DfE has referred him back to correspondence it sent to him in 2015 which broadly addressed those matters. The Commissioner has also found, in a separate case, that DfE does not hold particular information associated with the complainant's concerns connected with the Teachers' AVC and DfE's contract with Prudential. In the Commissioner's view there would seem to be little point in the complainant continuing to question DfE on these matters. Continuing to respond to requests from the complainant for similar information is a burden to DfE that, at this point, is disproportionate to the requests' value. For these reasons, the Commissioner finds that the requests in this case can be categorised as vexatious under section 14(1) of the FOIA.

Right of appeal

37. 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

38. 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.
39. 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

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