

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2021

Public Authority: Northumberland County Council

Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant has requested the outcome of a statutory proposal relating to the Bellingham schools in June 2015. The council refused the request on the basis that the request was vexatious and applied section 14(1).
2. The Commissioner's decision is that the council was not correct to apply section 14.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To respond to the request again as required by FOIA without relying upon section 14.
4. The public authority must take these steps within 35 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

5. On 30 January 2020 the complainant wrote to the council and requested information in the following terms:

"I note your association with the above schools and the NPLPT at that time, and would be grateful if you could advise me of the outcome of the statutory proposal relating to the Bellingham schools in June 2015, or alternatively direct me to the appropriate documents/source as I have been unable to find any details or references to the outcome.

The questions I have are:

- i) Was NPLPT removed as the foundation for the two Bellingham schools in 2015?*
 - ii) If so, what was the actual date upon which the Bellingham schools became foundation schools without a foundation."*
6. The council responded on 2 March 2020. It refused the request on the basis that section 14 applied (vexatious requests).
7. On 18 August 2020 the complainant wrote to the council and asked it to carry out an internal review. The council wrote back to the complainant on 26 August 2020. Noting that its initial response had been over 6 months prior, it said that due to the amount of time which had passed since it had provided its initial response to the request it would not carry out an internal review. This response falls within the terms of section 5.3 of the FOI Code of Practice under section 45 of the FOI Act¹, which clarifies that public authorities are not obliged to accept internal reviews after a period of 40 working days following the issue of the initial response.

Scope of the case

8. The complainant contacted the Commissioner 6 May 2020 to complain about the way her request for information had been handled. She is unhappy that the council has refused the request on the grounds that it is vexatious.

¹ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444441/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926.pdf)
([publishing.service.gov.uk](https://www.publishing.service.gov.uk))

9. The Commissioner notes that the request was made in the form of two questions. The FOI Act provides a right to request recorded information. It does not require an authority to respond to any questions asked of it.
10. Whilst the FOI Act does not require a public authority to specifically answer any questions which are made to it, authorities should consider whether any information it holds can respond to the questions asked.
11. However, in the first instance, as the council has refused the request as it considers it to be vexatious, the Commissioner must therefore consider whether the council is correct in applying this exemption. If it is not correct, it must then reconsider its response as required by section 1 of the FOI Act. If it was applied correctly then the council was under no duty to consider the request further.

Reasons for decision

Section 14(1) - vexatious requests

12. 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.
13. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*² (GIA/3037/2011). 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.
14. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is 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) harassment or distress of and to staff.

² <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

15. 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 requests"* (paragraph 45).
16. In the Commissioner's guidance, she suggests that 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.
17. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests³. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
18. 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.
19. The task for the Commissioner is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the evidence that is available to her. She will also refer to her published guidance on defining and dealing with vexatious requests.

The council's position

20. The council argues that at the time of the request it had received 39 earlier requests from the applicant since 1 April 2018. It said that it had received

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>

- 22 requests from 1st April 2018 to 31st March 2019
 - 19 requests from 1st April 2019 to 31st March 2020, and
 - 4 further requests from 1st April 2020 to 13th August 2020 (last request received).
 - It also said that it had received 2 internal review requests during that period.
 - The council noted that it had also received large numbers of emails from the complainant which were processed as "business as usual" enquiries.
21. The council considered that this is a significant number of requests to receive from a single applicant, particularly considering that each request contains multiple questions. It also noted the complexity of some of the requests, the sensitivity of some of the data requested, the location of some data and the time it took to process each request.
22. The council noted that the predominant theme of the requests are matters relating to "Bellingham Middle School" with other requests related to partnerships (which Bellingham falls into) including "Haydon Bridge Partnership" and "The North Pennine Learning Partnership (NPLP)". It provided the Commissioner with a spreadsheet demonstrating the pattern of the requests centred around these issues.
23. It said that all of the responses to all of the applicant's requests are coordinated by one particular service within the council - Children's Services. This was adding both a strain on time and resources processing requests of the same subject matter which would often overlap with a previous request.
24. It added that a lot of requests related to the applicant seeking confirmation, justifications, explanations, and opinions from council staff. It argued, correctly, that section 8 of the Act does not require it to generate information, answer questions, provide explanations, or give opinions, unless this is recorded information which it already holds. It therefore said that it was unable to respond to some questions, but that the complainant had been informed of this previously. The Commissioner notes, however, that this statement is not strictly correct. Whilst it could not be compelled to respond to questions where no information is held, it could respond to those questions if it chose to. The FOI Act does not prevent it from doing so.

25. It argued that it is not clear that the complainant actively uses the information which she has obtained from the council previously. It said that where it has informed the applicant that information is already published in the public domain, it has found no evidence that that information has ever been accessed or used to hold the Council to account. It said that it can only conclude that the pattern of requests is aimed primarily at disrupting its service delivery rather than achieving transparency and accountability, which are the fundamental aims of the Act.
26. It noted that the complainant is part of a middle school campaign group and pointed to various websites and local news articles where she has been quoted regarding issues about the schools and the partnership. It therefore considered that the complainant was acting as part of a campaign. It argued that this is the real motivation behind the volumes and frequency of requests.
27. The council noted that when it had dealt with a previous complaint from the applicant under its corporate complaints procedure (again relating to the question of the schools), it had confirmed to her that as the complaint related to a decision of cabinet its corporate complaints procedure could not overturn a cabinet decision, and it provided advice to make a complaint to the Local Government and Social Care Ombudsman for an independent view.
28. The council went on to detail the burden that the requests have had on its ability to carry out its functions. It said that the volume and complexity of the requests received by the applicant has had a significant burden on the council's resources over a very long period of time, diverting such resources from service delivery.
29. It considers that the complainant's request demonstrates an unreasonable persistence in seeking to obtain information which has already been the subject of independent scrutiny and information already in the public domain. The council also believed that the complainant had shown unreasonable persistence and in her constant questioning of the council via FOIA requests and also routine emails to the council.
30. It noted that it has received a further 4 requests since the request above was received, indicating a continued pattern of behaviour by the complainant.

31. It argues that the requests:

- Argue points rather than asking for new information in many submitted.
- Raise repeat issues which have already been fully considered by the authority.
- Refuse an offer to refer the matter for independent investigation, or ignores the findings of an independent investigation.
- Continue to challenge the authority for alleged wrongdoing without any cogent basis for doing so.
- Are pursuing a relatively trivial or highly personalised matter of little if any benefit to the wider public.

32. It said that, having reviewed the ICO guidance, it believes that section 14(2) will also apply in this case due to the requests being identical or similar to previous requests submitted by the same individual, also taking into consideration there has not been any reasonable period of elapsed time between requests.

33. It did not provide details as to why this request was a repeat of any largely similar request which has already been responded to however.

The complainant's position

34. The request, in particular relates to the result of a statutory Proposal which was published by the council in 2015 entitled "*Proposals to remove North Pennine Learning Partnership as the Foundation of Bellingham First School, Bellingham Middle School and Sports College and Haydon Bridge High School*".

35. The Commissioner notes that that proposal was subsequently withdrawn and replaced by a further statutory proposal dated 26 June 2015⁴. The proposal asked for any objections or comments to be received by 17 July 2015.

36. The request effectively asks for the outcome of that proposal and asks further questions regarding the effect of that outcome.

⁴ [NPLP Revised Statutory Notice.pdf](#)

37. The complainant has expressed a number of concerns regarding the actions of the council, particularly as regards Bellingham Middle School. She has also outlined various points in statutory guidance which, she alleges, the council has not followed in its actions regarding the school.
38. She has further highlighted wider issues, such as an attempt by the council to close the school⁵ which was overturned by The Office of the Schools Adjudicator⁶⁷. She argues that its actions subsequent to this decision have impacted significantly upon the viability of the school. These include amending the school's catchment area, resulting in fewer pupils being able to choose it as an option of choice, and a withdrawal of funding which she argues was previously promised to the school.
39. She has outlined some of the difficulties which its actions will or have had on the school, and how these have, or will, impact upon children within the school's previous catchment area.
40. Her primary concern is that she believes that the council has failed to act appropriately in its actions. She believes that, since the council was told that it was not able to close the school by the school's adjudicator, it has systematically sought to reduce the school and make it less viable for it to continue successfully. She considers that its plan remains to close the school and divert children to other schools. She argues that these alternative schools are over 15 miles away from the site of Bellingham Middle School, which is in a largely rural area.
41. She explained to the Commissioner that she wishes to know the outcome of the statutory consultation as she considers that this impacts upon the ownership of land on which Bellingham Middle School is situated. She believes that if the school was withdrawn from the NPLP then the land ownership should have reverted to the school. The Commissioner does not know whether the complainant's assertions are correct.

⁵ <https://www.hexham-courant.co.uk/news/16612720.last-ditch-battle-save-bellingham-middle-school/>

⁶ <https://www.bbc.co.uk/news/uk-england-tyne-45958508>

⁷

[STP635 Bellingham Middle School and Sports College Northumberland 13 November 2018 \(publishing.service.gov.uk\)](#)

42. The Commissioner notes that the NPLP was dissolved as a company on 21 May 2019⁸. She also notes that the Hexham Courant reported, on 27 October 2016⁹, that the ownership of the freehold for the land on which Hayden Bridge High School is sited was held by the NPLP, which had not met in over two years by the time of reporting. The need to transfer the freehold back from the NPLP to the school was reported as delaying its takeover and subsequent development by a third party¹⁰. The complainant argues that this subsequently occurred for the school in question in that media report, but the situation remains unclear as regards Bellingham Middle School.
43. The complainant believes that the situation is currently unclear, and her request is therefore seeking greater clarity.
44. Following on from the complainant's arguments, the Commissioner notes a quote from a local parish councillor who is also angry with the council's actions and who has expressed concerns along similar lines. He is quoted within a local news article as stating:
- "The county council has behaved disgracefully since its plans to close the middle school were thwarted by the adjudicator.*
- It is using children as pawns in its bid to close the school by stealth, by denying them the free transport to their local school which is their entitlement."*¹¹
45. Whilst this latter point relates to actions which took place after the complainant made her request for information, it nevertheless follows along the same line of concern which the complainant has expressed, and supports her view and concern that the council's actions are undermining the continued viability of the school.

⁸ <https://find-and-update.company-information.service.gov.uk/company/06553173/filing-history> -

⁹ <https://www.hexham-courant.co.uk/news/haydon-bridge/16619972.dont-blame-us-says-partnership/>

¹⁰ <https://www.hexham-courant.co.uk/news/16620057.land-wrangle-holds-up-haydon-bridge-school-takeover/>

¹¹ <https://www.hexham-courant.co.uk/news/19282784.anger-school-transport-refused/>

The Commissioner's analysis

46. It is not the Commissioner's role to pass judgement on whether the council's actions regarding the schools are correct. This may be an issue which the Local Government and Social Care Ombudsman can consider.
47. In cases involving section 14, the Commissioner does need to consider the wider value and purpose behind the request which has been deemed vexatious, or behind the overall issues which the council highlights as its reasons for declaring a request vexatious.
48. The Commissioner notes that there is wider public concern within the community regarding the actions of the council as regards Bellingham Middle school. This is evident from the local news articles highlighted above, and from the number of objectors who fought to keep the school open when it was under threat in 2018.
49. Since the adjudicator's decision, the Commissioner notes that there have been a number of decisions and actions taken by the council which many parents have disagreed with, including, as noted above, the alteration of the school's catchment area, and subsequent to the request and response to this request, a withdrawal of funding for school buses to the school, whilst funding for an adjacent primary school was retained.
50. Regardless of the specifics and the accuracy of the complainant's allegations about the council, there is clearly a significant amount of concern and anger more widely regarding the council's actions which pertains to the schools concerned, and in particular to Bellingham Middle School.
51. The questions asked in this request seek to clarify the status of the school following the council's statutory proposal which was intended to take effect on 20th July 2015. The complainant is seeking the outcome of that proposal and the date when this took effect (if it did).
52. Having considered this background, the Commissioner is satisfied that the complainant's request for information addresses a valid concern, and it has significant value and purpose in terms of the public interest.
53. The Commissioner notes and accepts the burden which the complainant's requests will have placed upon the council previously. Nevertheless, it is apparent that the requests relate in part to a perceived threat to the continued viability of the school, and she is seeking greater clarity on matters which are currently unclear to her surrounding the council's past actions which may affect any current intentions it has.

54. Whilst the Commissioner accepts that receiving so many requests from one individual might create a burden upon the council, she notes that the current request for information would not place a significant burden on the council to respond. Whilst the request should be responded to by the provision of information which the council holds which can answer the question asked, in effect, the council could provide a simple response to the questions asked. It would only need to provide information it holds which indicates a yes or no answer to the first part of the request, and a date to respond to the second.
55. Given the current lack of clarity as to a fundamental point about the outcome of a statutory proposal, the Commissioner considers that there is a strong wider interest on the council to respond to the request.
56. She also notes that as a large public authority, the affect of the complainant's requests, whilst significant, has been over a number of years, and would not have created a "*very significant burden*" upon the council's resources as a whole when balanced against its overall resources, and when balanced against the motivation and purpose behind the requests which she has made. As a county council the council is responsible for a significant budget and has a large number of employees working for it over all of its areas.
57. The Commissioner notes that the council has not sought to argue that the requests have been specifically antagonistic towards council officers, nor that the effect of the request or past requests has been to annoy or harass council officers. She does accept however that receiving numerous requests over similar matters from the same individual may have had the effect of annoying council officers tasked with responding to the requests.
58. However, she notes that the complainant's persistence, whilst potentially on matters which the council is not able to change on some occasions, does emanate from matters of concern to the community, and follows an issue where the council has had other actions it has proposed overturned previously by an independent adjudicator.
59. The Commissioner is satisfied therefore that the matter which the request refers to emanates from a lack of clarity by the council over the status of the school following the statutory proposal in 2015. The complainant has raised valid concerns which arise from that status, which could impact upon the school in a significant way if they are correct.

60. Turning to the council's argument that the complainant is acting as part of a campaign, the Commissioner accepts that the complainant has an interest in the retention of Middle Schools and appears to be active in supporting a three-tier system of schooling.
61. The Commissioner guidance on the application of section 14 at paragraph 91, states that:

If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.

62. The Commissioner accepts the council argument that the complainant has been involved in a number of activities campaigning for middle schools to be retained. The complainant admits that she is active in campaigning to protect the schools in the area from being closed. The Commissioner considers, however, that this is not an overriding factor which identifies the request as vexatious in this instance. The request has value and purpose and there appears to be a lack of clarity over the outcome of the NPLP proposal of 2015. Additionally, the campaign (which the complainant admits to being part of) relates to protecting the schools and the 3-tier system of schooling. It does not relate to a campaign to harass or irritate the council.

Conclusions

63. The Commissioner notes that many of the factors which she has recognised as aiding in identifying vexatious requests are evident in the arguments which the council has highlighted.
64. The Commissioner considers that the council's arguments as regards the application of section 14 do therefore have merit, and she considers that the number of the requests made previously by the complainant has been significant.
65. She accepts the council's argument that the requests interlink and interrelate, and that they surround the same or similar subject matters.
66. She notes that council officers may feel annoyed to have received a number of requests from the same person over similar issues, when the council considers that its actions have already been considered and decided as appropriate by an independent body previously. That said, the adjudicator's decision was against the council's preferred course of action and so the Commissioner places little weight on this point.

67. She also accepts that the complainant is active in a campaign to retain middle schools, albeit that her central concern appears to be Bellingham Middle school, in particular, in relation to this request. She does not, however, consider that this is a form of campaign seeking to disrupt the council by virtue of the sheer weight of FOIA requests being submitted.
68. She considers that the campaign in question relates to supporting a three-tier system of schooling in the area. She does not consider that the requestor intends the request to be vexatious, annoying or harassing.
69. In the Court of Appeal Case in *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454 (14 May 2015))¹², Lady Judge Arden observed that; *"...the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public."* (Para 68)
70. The Commissioner therefore needs to consider whether the purpose and value of the information justifies the impact on the public authority.
71. Paragraph 52 of the Commissioner's guidance on vexatious¹³ requests states that:
- "The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority."*
72. The Commissioner considers that the council has issued a statutory proposal and offered the public the opportunity to provide comments or objections. It appears that the results of that proposal are currently unclear to the community.

¹² <https://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html>

¹³ [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](#)

73. The Commissioner also notes that the request is related, in part, to the wider issue of the school, and that the situation the school has been put in by the actions of the council. This has led to wider concerns by affected parents in the community. The Commissioner stresses, however, that it is not her role to make a judgement on whether the actions of the council are correct or not in respect of these wider issues.
74. Nevertheless, the Schools Adjudicator's decision in November 2018 overturned the councils plans for the closure of Bellingham Middle school, and its actions since that point have raised public concerns as to its ongoing plans for the school and the support that the council provides to it. A disclosure of the decision following the statutory proposal would provide a better understanding of the school's current standing following that statutory proposal.
75. The key question for the Commissioner is to decide whether, when considering the circumstances surrounding the request on a holistic basis, the council is correct to argue that responding to the request is likely to cause it a disproportionate or unjustified level of disruption, irritation or distress.
76. Ultimately, given the lack of clarity over the outcome of the statutory proposal of 2015, the ease upon which the council could respond to the request, the clarity over the wider issues a disclosure might provide, and the overall concerns expressed by the community about the council's actions regarding the schools, the Commissioner is satisfied that the request was not vexatious and hence the council was not correct to apply section 14 to refuse the request in this instance.
77. The Commissioner therefore requires the council to respond to the complainant again, without relying upon section 14 of the FOI Act.

Right of appeal

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

79. 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.
80. 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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