

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 May 2014

Public Authority: Oxfordshire County Council

Address: County Hall
New Road
Oxford
OX1 1ND

Decision (including any steps ordered)

1. The complainant has requested information relating to allegations of abuse at a college in Oxford. The council, having dealt with a number of other requests over this issue from the complainant declared that the requests were vexatious under section 14 of the Act.
2. The Commissioner's decision is that Oxfordshire County Council has wrongly declared the request to be vexatious under section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response under the FOIA without relying on section 14(1) of the FOIA.
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 22 September 2013, the complainant wrote to the council and requested information in the following terms:

Ref: FS50523251: *"Please forward to me all of internal email traffic generate from my 1st Aug email to Cllr Tilley."*

6. This followed a request on 2 September 2013 for

Ref: FS50523254: *"How many strategic meetings has [name redacted] attended in connection with reported incidents at OCV? Please include all dates and venues when replying and internal arrangement paperwork."*

7. The Commissioner does not have the date on which the council responded but he does have a copy of the response. The council said that the requests were vexatious and applied section 14.
8. Following an internal review the council wrote to the complainant on 8 November 2013. It upheld its initial decision to apply section 14.

Scope of the case

9. The complainant contacted the Commissioner 24 November 2013 to complain about the way his request for information had been handled.
10. The Commissioner considers that the complaint is that the council were not correct to apply section 14 to the requests.

Reasons for decision

Section 14 – Vexatious requests

11. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
12. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield UKUT 440 (AAC)*, (28 January 2013) the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon

the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure.' The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

13. 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 at http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx. In short however they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
14. 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.
15. The Commissioner's guidance suggests that 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. Where this is not clear, the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.

Wider context

16. The council provided its arguments for applying section 14. Its first point is the nature of the inquiries made relate to the allegations of abuse made about individuals at a college. It considers that the complainant was not, to its knowledge, directly involved in the issues and has no connection with the college or the individuals concerned. It therefore has concerns that information about a sensitive subject is being requested by a third party for reasons which are not absolutely clear to it.

17. The Commissioner notes however that the complainant does appear to have some personal knowledge of the events, albeit that it may not be clear to the council how he has obtained that knowledge or whether, or to what extent, he was involved in the issues.
18. The council says that it has substantively dealt with the issues relating to the college and has acted upon the intelligence it received at the time relating to safeguarding the college. It said that *"Notwithstanding this, the Council has responded to [the complainant's] requests, recognising at the outset that they were motivated, it was assumed, by a wish to ensure that all necessary steps had been and were being taken into account in relation to the safeguarding of young people at OCVC. However, the context and history of [the complainant's] dealings with the Council, in response to requests and otherwise, has led the Council to the conclusion that these latest requests are effectively unjustified and represent a disproportionate use of Council resources in a matter which has been substantively addressed."*
19. The council says that prior to these two requests it has received 9 requests all about the allegations and the college and the councils involvement with the surrounding investigations from the complainant. It said that of this 6 were progressed to the Information Commissioner, thereby increasing the burden upon the council. The complainant says that he has made 8 requests in 8 months.
20. The council said that as the requests all revolved around the issue of the allegations they have fallen to the safeguarding team at the council to respond, with the result that a considerable amount of work has been required of them. The council argues that to divert the attention and the resources of this team from its core work further in order to respond to these requests is not in the public interest, particularly as the requests revolve around a matter which it considers has already been comprehensively addressed.
21. The council is a large authority, but the fact that a particular department has been called upon more than others when responding to the requests is a relevant concern when considering whether the council as a whole has been disproportionately burdened by the requests. If the department's work is disproportionately disrupted to the point where its ability to carry out its functions is disrupted then this is obviously a relevant factor.
22. The council also outlined the tone of the language used by the complainant and suggested that part of the intention behind the wording was to annoy or harass council officers. It highlighted in particular one sentence where the complainant stated *"Did you actually read my complaint or were you told what to write?"*

23. It also argued that the requests have been overly burdensome in that they have overlapped. It said that the complainant has made requests for information whilst awaiting responses (or decisions from the Commissioner) on other requests.
24. Additionally the council argues that although the complainant is aware of the normal channels to use to make requests he has used a scattergun approach, communicating with different people within the council. It says that this has caused confusion when trying to deal with the correspondence, and that this has led to disruption and duplication which is counterproductive. It also said that on occasions he appears to have asked for information which he already has in his possession.
25. The council considers that the requests are futile in that the matters to which the requests relate have been conclusively investigated and addressed.
26. The council has also made further arguments to the Commissioner which he has not included within this notice. The Commissioner has nevertheless taken these arguments into account when making his decision over these complaints.

Counter arguments

27. The Commissioner notes that the number of requests is not greatly excessive over the period of a year. The number of requests is relatively high over that period but it is not an overwhelming amount.
28. The requests are persistent but do not appear to be obsessive. In some instances complaints made to the Commissioner about the council's responses to his requests found in the complainant's favour. It is natural therefore that the complainant will make complaints to the Commissioner where there are genuine concerns over the council's responses to his requests.
29. The council outlined its view that responding to the requests created a disproportionate burden on one department within the council. The requests however do not appear to be disproportionate for the council overall. Oxfordshire County Council is a large authority and 10 requests over a period of approximately one year does not appear to be excessive.
30. The Commissioner also notes that the requests were not for voluminous amounts of information and the council has failed to provide evidence that they would have caused a disproportionate burden based purely on the volume of information requested. The complainant argues that the most information he received from any of the requests was a 3 page report. He argues, justifiably, that this would not create a

disproportionate burden based upon locating, extracting and providing the information, and the Commissioner agrees with this argument. The complainant also says that where a large amount of work has been required this has generally been because the council has refused a request and he has subsequently made a complaint to the Commissioner.

31. The council has said that it has received further requests about the situation from other parties. The Commissioner recognises however that as the central issue regards serious allegations which were reported in the press then it would be understandable that individuals associated with the college might wish to seek further information about what had occurred and/or what the council or the college had done about it. The council has not provided any evidence which would establish that these requests were part of any deliberate campaign being waged by a number of individuals who are acting in concert.
32. The Commissioner has not therefore aggregated the complainant's requests with other requests as there is no clear evidence that that is the case. The council has, in any case, fallen short of actually stating that it has done this but has alluded to the number of requests over this issue as being relevant.
33. The council argues that the request is futile because it has already completed its investigation of the issues. The issue is however an important question regarding whether the councils (and the college's) investigations into the allegations of abuse were appropriately investigated. The council says that it has fully investigated the situation however the complainant presumably considers that it has not provided a clear understanding of what actions it took in response to the allegations it received. It has provided some information in response to the complainant's and others individuals requests however it is difficult for the public to establish what actions were taken as a result of the allegations. Clearly a disclosure of the information requested by the complainant would shed greater transparency over the issue.
34. The Commissioner therefore disagrees with the council and considers that the request is not futile in this respect. It has both value and purpose. Whilst the council may have finished its consideration of the issues there is a public interest in demonstrating that serious concerns have been treated appropriately and investigated properly.
35. There is however an important side issue to this is however. Although the requested information may not all be sensitive, the issues which are involved are likely to include information which should not generally be disclosed to the public. College staff and pupils are involved with the allegations and there are likely to be arguments that information about

their involvement, or disciplinary investigations surrounding their actions may need to be withheld under the laws of confidence and the Data Protection Act 1998 (the DPA). This may include personal, confidential details of the college staff members and/or details of pupils involved in particular incidents or allegations.

36. For his part, the complainant recognises that he should not have access to some personal data, however the Commissioner notes that he appears to be seeking to build up a picture of the councils investigation (or what actually occurred at the college) through a 'mosaic' of information requests. By making a number of requests which, whilst in themselves will not disclose sensitive information, the combined effect, together with other information already available to him may provide details which may well be sensitive if considered as a whole.
37. The Commissioner therefore accepts the councils concerns as regards the nature of the information which is being requested. He considers that it is these concerns which have led to the cautious approach being taken by the council over the issue. Whilst the Commissioner recognises that this is the case however there are appropriate exemptions which can be used which directly address such information. The council cannot apply section 14 in the place of these in order to simplify its response in such cases where it would not otherwise be appropriate.
38. Whilst the Commissioner acknowledges and accepts the need to be cautious about what information is being disclosed, the remedy for this lies within the exemptions to disclosure rather than under section 14 of the Act. For instance the Data Protection Act 1998 describes personal data as data on a living individual who can be identified from that information, "*or from other information which is and other information which is in the possession of, or is likely to come into the possession of, the data controller*". Section 40 may therefore be applicable if the council is aware that some individuals may be recognised from a disclosure of requested information, even where they cannot be directly identified from the requested information itself.
39. The Commissioner has not been convinced that the requests have been formulated and made to separate departments or individuals with a view to purposely increasing the burden on the authority when responding to the requests. The Commissioner considers that it is likely that the complainant has copied councillors into his requests with a view to ensuring that they are fully aware of his requests and his concerns.
40. The Commissioner has also not been convinced that the overall purpose of the requests is to burden or harass the authority. The number of requests and the language with which they have been made do not provide strong evidence to this effect. If the intention was to harass the

council then the Commissioner considers it likely that many more requests, or more involved requests would have been made. As it stands the majority of the requests were for information which was not particularly burdensome to respond to.

41. Finally, although the council has highlighted the fact that the complainant is not associated with the college insofar as it understands, it is aware that he has some knowledge of the events, and that he does therefore have an interest in the issues which occurred. He therefore does appear to have some motivation beyond simply being vexatious by making the requests for information.
42. The Commissioner is also satisfied that there is value and purpose behind the requests. Whilst the council and the college have clearly carried out an investigation into the allegations, the results of this are not fully known by the public, certain press websites have made disparaging comments about the situation and the actions of the authorities in respect of this. The Commissioner does not know whether the reports were accurate or not however this is not relevant to his decision. The fact is that the council's actions have been questioned publically in the media and this may have raised public concern.

Conclusions

43. The Commissioner has considered whether the requests are unjustified, inappropriate or improper use of a formal procedure. He has also considered whether they would create a disproportionate or unjustified level of disruption. Taken in context he has considered the above arguments and has not been convinced by the council's arguments that the complainant's requests are vexatious.
44. As regards these particular requests the Commissioner has decided that the council was not correct to apply section 14.

Other Matters

45. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters.
 - a) Although the Commissioner has upheld the complainant's request the complainant should be aware that his continued questioning of the council as regards these issues does give rise to concern. The Commissioner has concerns about the amount of information which he could piece together to draw conclusions about the actions of individuals or officers which should not generally be disclosed into the public domain given the sensitivity of the issues concerned.

- b) Employees of a public authority have rights under the laws of confidence and under the DPA even though they work within a public authority. Information on investigations or on disciplinary proceedings into employees or individuals within a college which resulted as a result of allegations may well be exempt information under the laws of confidence or under the data protection principles of the DPA.
- c) Information on any potential criminal offences which are alleged to have been carried out by or to individuals is sensitive personal data as defined by The Data Protection Act 1998 and must be disclosed lawfully, and in compliance with the requirements of schedule 3 of that Act and any other relevant legal obligations.
- d) There will be limited circumstances under which this sort of information can lawfully be disclosed
- e) The Commissioner fully understands the concerns of the council in this regard. This is particularly the case when considering that the complainant appears to have some personal knowledge of the events at the college. This does raise the potential for an inadvertent disclosure of information on sensitive issues, of sensitive personal data or information which should actually be retained in confidence by the authorities holding it. It is right that the council is cautious about the disclosure of information in such circumstances.
- f) The complainant should also take note that the Commissioner's decision in this case does not provide him with the ability to make as many requests as he wishes over this issue. Clearly the issue is sensitive and some information will need to be withheld by the council, and it can do this both lawfully and appropriately. If the complainant continues to make requests relating to the same issue this will be likely to lead to the arguments that persistence has become obsessive strengthening and the Council may then be in a stronger position to apply section 14.
- g) The complainant is therefore unlikely to be able to obtain all of the information which he might wish to access due to the sensitivity of that information, whether or not he has personal knowledge of some of that information already. Disclosures under the FOI Act are considered to be global in nature and therefore some information which the complainant may already be aware of may still be considered exempt under the Act.

Right of appeal

46. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

47. 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.
48. 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

Andrew White
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