

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2011

Public Authority: King's College Cambridge
Address: Cambridge
CB2 1ST

Decision (including any steps ordered)

1. The complainant made a number of requests to King's College Cambridge (the "College"). The College refused to deal with these requests, stating that the requests were vexatious (section 14(1)).
2. The Commissioner's decision is that the College was correct to rely upon this exemption in refusing to deal with these requests in relation to any information that would not be the personal information of the complainant. In relation to any information that (if held) would be the personal information of the complainant, the Commissioner's decision is that the College can rely upon section 40(5)(a) in order to refuse to confirm or deny whether this information is held.
3. The Commissioner does not require the College to take any additional steps.

Request and response

4. On 7 September 2010, the complainant wrote to the College and made 3 requests. For ease of reference, this will be referred to as the '7 September requests' throughout this notice.
5. On 5 November 2010 the complainant wrote to the College and made 17 requests. For ease of reference, this will be referred to as the '5 November requests' throughout this notice.

6. On 29 November 2010 the complainant wrote to the College and made 28 requests. For ease of reference, this will be referred to as the '29 November requests' throughout this notice.
7. Due to the nature of many of these requests the Commissioner has decided to not quote these in full in this notice. Instead, these are detailed in the confidential annex attached to the end of this notice.
8. On 3 December 2010 the College provided a response to the 5 November and 29 November requests. It stated that these requests were vexatious, and as such section 14(1) applied.
9. The complainant requested an internal review of this decision on 10 December 2010.
10. On 18 January 2011 the College provided a response to the 7 September requests. Again it stated that it believed these requests to be vexatious, and as such section 14(1) applied.
11. The complainant requested an internal review of this decision on 18 January 2011.
12. On 10 February 2011 the College provided the results of the internal review for the 5 November requests, and partially overturned its use of section 14(1). However, in relation to requests (3), (4), (6), (9), (10) to (12), (15) and (17), it upheld its use of section 14(1).
13. On 21 February 2011 the College provided the results of the internal review for the 29 November requests, and partially overturned its use of section 14(1). However, in relation to requests (1) to (13), and (21) to (28), it upheld its use of section 14(1).
14. Finally, on 26 April 2011 the College provided the results of the internal review for the 7 September requests, and upheld its use of section 14(1).

Scope of the case

15. The complainant has contacted the Commissioner to complain about the way that certain of his requests for information had been handled.
16. During the investigation the Commissioner clarified with the complainant which elements of his requests would be considered in this case. Bearing this clarification in mind, the scope of this case has been to consider the College's use of sections 14(1) to refuse:
 - 7 September requests – requests (a), (b) and (c);

- 5 November requests – requests (3), (4), (6), (8), (10) to (12), (15) and (17); and
 - 29 November requests – requests (1) to (13), and (21) to (28).
17. Therefore the scope of this case has been to consider the College's use of section 14(1) to refuse these requests. In addition to this, he has also considered whether the College could rely upon section 40(5)(a) to refuse to confirm or deny whether it held any information falling under the requests that (if held) would be the personal information of the complainant.

Background

18. The requests in question contain references to King's College School Cambridge (the "School"). For the reasons set out in the decision notices for FS50285876 and FS50318306, the School is part of the College for the purposes of the FOIA.

Reasons for decision

Exemption for vexatious requests

19. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if that request is vexatious. The College has applied this exemption to all of the requests that are under consideration in this case.
20. To the extent that if any information was held that would fall under the scope of the requests, and was the personal data of the complainant (as defined in the Data Protection Act 1998), the College would not be able to rely upon this exemption to refuse to deal with these requests (insofar as they related to the personal data of the complainant). However, the Commissioner has considered the application of section 40(5)(a) to any information of this kind. This is discussed further at paragraphs 54 to 59 below. Therefore the Commissioner has only considered the application of section 14(1) in relation to these requests, insofar as they do not relate to the personal data of the complainant.

21. The Commissioner considers that the following five factors should be taken into account when considering whether a request can be characterised as vexatious.¹ These are:

- Whether compliance would create a significant burden in terms of expense and distraction.
- Whether the request is designed to cause disruption or annoyance.
- Whether the request has the effect of harassing the public authority or its staff.
- Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
- Whether the request has any serious purpose or value.

22. During the investigation the Commissioner wrote to the College asking it to consider these factors and how they applied in this case. In making his decision the Commissioner has considered the College's submissions, as well as those of the requestor. Whilst the issue here is whether the request, rather than the requestor, is vexatious, the wider context of the dealings between the College and the complainant may be relevant where these suggest that the pattern of the contact between the complainant and the public authority means that these requests can be fairly characterised as vexatious.

Would the requests impose a significant burden in terms of expense and distraction?

23. The Commissioner considers that determining whether a request has a significant burden involves more than just the cost of compliance. A public authority should also consider whether responding would divert or distract its staff from their usual work.

24. The College has argued that it has already spent a lot of time dealing with requests from the complainant, and has provided evidence to support this statement. It has stated that between 13 November 2009 and 6 September 2010 its staff had spent 18.5 hours dealing with 39 requests from the complainant. In the same period, its staff had only

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http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Practical_application/VEXATIOUS_REQUESTS_A_SHORT_GUIDE.ashx

spent 4.5 hours dealing with requests from individuals other than the complainant. In addition to this, between 7 September 2010 and 29 November 2010 its staff spent 23 hours dealing with requests from the complainant. In the same period, its staff had only spent 8 hours dealing with requests from individuals other than the complainant.

25. If the concern of the College related only to the time that would be taken in complying with the complainant's requests it would have been more appropriate for it to cite section 12(1) of the FOIA, and refuse the requests on the grounds of costs. However, the Commissioner accepts that these are relevant factors where the concern of the public authority is about the burden of the requests both in terms of cost and of diverting staff away from the core functions of the public authority.
26. In particular, the Commissioner considers that a relatively simple request may still be deemed to impose a significant burden because if it can be shown that any response will be very likely to lead to a significant number of further requests and complaints. The wider context of the request – and in particular any pattern of earlier requests – will be particularly relevant in establishing this.
27. Therefore in considering the College's arguments the Commissioner has taken into account the context of the requests that are the focus of this case. In particular he notes that between September and November 2010 (during which the requests in question were made), the complainant made the following requests to the College:
 - 7 September requests – 3 requests
 - 8 October 2010 – 2 requests
 - 22 October 2010 – 5 requests
 - 5 November requests – 17 requests
 - 29 November requests – 28 requests
28. In addition to this, the Commissioner also notes that the complainant made an additional 45 new requests in a letter dated 29 November 2010 – received by the College on 30 November 2010. The College's handling of those requests is subject to a separate decision notice under case reference FS50374489.
29. The Commissioner has gone on to consider whether there is any pattern whereby whenever the College responded to a request, this would be highly likely to generate further correspondence and further requests from the complainant. As noted above, this case can be placed in the context of the complainant having made a large number of requests to

the College since 2009. Having been provided with a copy of these requests, the Commissioner considers that it is fair to say that many of them were made following the receipt of a response to a previous request – some are in fact embedded within requests for internal reviews.

30. In reaching a view on this, the Commissioner has also considered the complainant's statement in an email to the College on 11 January 2011 that,

"I have no wish to inconvenience the College or the School, just a desire to get to the bottom of the failings, incompetence and prejudice of certain senior managers at the school and the cover up that some of the school governors were involved in. I have no time pressures and will continue to press for answers even if this means having to make formal complaints to the ICO."

31. He has also noted another statement by the complainant, in a second email to the College on the same day that,

"...for as long as the responses I receive have the manner of stonewalling, I should advise you that I will continue to ask for internal reviews and if after that I am still not happy with the responses, I will continue to make formal complaints to the ICO."

32. Bearing these points in mind, the Commissioner considers that these requests are part of a pattern whereby any response from the College would be highly likely to generate further correspondence and further requests from the complainant.
33. The Commissioner considers that this is an important factor to take into account when considering whether responding to a request would be costly and burdensome.²
34. Additionally, the College has referred the Commissioner to the nature of the complainant's requests, and in particular the repetitive nature of many of them. Given the way in which the requests are written, where many either repeat or overlap earlier requests, the College has argued that this has compounded the burden on its staff dealing with these requests,

² *Betts v the Information Commissioner* [EA/2007/0109]

"Each time we received a new request our first thought was 'haven't we answered this already?' and we thus had to look through the previous correspondence. Thus each new request took about half as long again to answer as the previous request. The cumulative effect of simply controlling and administering the resultant files of (electronic) paperwork was inevitably an additional burden."

35. Thus, it has argued, the burden of dealing with the complainant's requests has been extremely burdensome on its staff, and would continue to be so if it were to respond to the requests that form the basis of this case. It has informed the Commissioner that it has only two employees who handle FOIA requests to the College, alongside their other duties. Prior to the series of requests being made by the complainant, these staff members had been able to handle their FOIA duties alongside their other duties with little difficulty. However, since then many of their other duties have had to be given lower prioritisation for months at a time, in order to meet deadlines to respond to the complainant's requests. It has described dealing with these requests as a significant extra burden in terms of time and distraction, and that this has been disruptive and dispiriting for its employees, diverting them away from their core functions.
36. Taking these factors into account, the Commissioner is satisfied that the context and history of the request and the submission of numerous requests to the College in a short time period, render the requests in question in this case burdensome in terms of expense. Therefore he is satisfied, from the evidence supplied by the College, that the provision of a response to these requests would involve a burden both in terms of expense and on the impact on staff time.

Were the requests designed to cause disruption or annoyance?

37. The College has referred the Commissioner to articles in the media, anonymous letters sent to other schools and organisations in the region, and changes made by persons unknown to the Wikipedia entry for the School. However, without any evidence linking these to the complainant the Commissioner has not taken these into account. Therefore he has not given any weight to this factor.

Would the requests have the effect of harassing the public authority or its staff?

38. In reaching a view on this factor the focus should be on the likely effect of the request (seen in context), not on the requestors intentions. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing. Relevant factors to take into

account will include the volume and frequency of correspondence, the use of hostile or abusive language, or mingling requests with accusations and complaints.

39. The College has argued that these requests would have the effect of harassing its staff and in particular the employees dealing with the requests. It has referred the Commissioner to the following factors that it has taken into account when coming to this view:

- the volume and frequency of requests that have been made, and in particular, the fact that many requests have been made within a short period of each other (see paragraphs 24 and 28 above);
- linked to this, the nature of the requests which are at times repetitive and/or overlap with earlier requests;
- the behaviour of the complainant which, in the College's view, has been obsessive;
- in one instance, the complainant emailed the College to remind it that a response to a request was due the next day, and asked it to confirm that it would be responding to his request within the time limit; and
- the use of accusatory, sarcastic and bullying language.

40. The College has argued that the complainant's behaviour has already had a harassing effect on several of its employees, and that responding to these requests would only compound those effects. In particular, it has provided arguments as to the direct harassing effect handling these requests has had on one of its staff dealing with the FOIA. Whilst, given the personal nature of these arguments the Commissioner has not detailed them in this notice, he is satisfied that these show that these requests have had a harassing effect on this member of staff.

41. The Commissioner is not convinced that there is any hostile, abusive or offensive language in this case. Nor does he consider that in relation to the requests in question in this case, that there is a mingling of accusations and complaints.

42. However, the Commissioner notes the number of requests made by the complainant, and in particular the number of these that have been made in a relatively short time period. He also notes his conclusions that there is a pattern that any response from the College to a request would be highly likely to generate further correspondence and further requests from the complainant. In addition to this, he does accept that some of these other requests contained language that could have been interpreted as accusatory. Bearing in mind these factors, the

Commissioner is satisfied that dealing with these requests could have had a harassing effect on those members of the College's staff who were tasked with dealing with them.

43. The nature of the College's arguments illustrate the close links between this factor and the question as to whether the requests can be fairly characterised as obsessive and manifestly unreasonable. The Commissioner has gone on to consider this factor.

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?

44. After considering the College's submissions, the Commissioner considers that it has argued that these requests should be regarded as obsessive as:

- the volume and frequency of the correspondence strongly indicate that the requests are obsessive;
- the overlapping, somewhat repetitive, nature of these requests exacerbates the burden of these requests;
- the complainant nearly always responds to its emails within 24 hours, and usually within a few minutes; and
- in its view the complainant is obsessed with his own viewpoint, to the exclusion of any other.

45. In addition to this, the College has also argued that the complainant has continued a three year campaign against particular employees. In particular, this campaign has focused on a particular teacher at the School, and various personnel at the College and the School who were involved in dealing with those concerns and subsequent events.

46. The Commissioner again notes the regularity and number of requests made by the complainant to the College. He also notes that most of these requests are on a theme and are focussed on the concerns the complainant had about a particular teacher, and the subsequent events following the raising of these concerns. After reading through the details of these requests, the Commissioner is satisfied that they are all linked in some way.

47. In the Commissioner's view, the number and continual flow of requests on a linked theme demonstrates behaviour of an obsessive nature.

48. The Commissioner is mindful of his conclusions that there is evidence that these requests are part of a pattern, whereby every time that it

responded to a request, this would be highly likely to generate further correspondence and additional requests from the complainant.

49. Taking these points into account, the Commissioner is satisfied that the complainant's general approach can be fairly seen as obsessive. As such, he considers that these requests have an obsessive quality. The Commissioner therefore accepts that a reasonable public authority would find these requests, in this context, obsessive.

Do these requests have value and/or a serious purpose?

50. The College has argued that these requests lack value or serious purpose as the complainant's main purpose is not to obtain information, but is instead to pursue his grievances against the College and the School, and some of its employees.
51. The complainant has argued that his requests have arisen as a result of an unannounced emergency inspection by the Independent Schools Inspectorate (the "ISI"), which resulted in several criticisms of the School, and the actions of the College and the School in informing the parents of the results of this inspection. The complainant has described the results of this inspection as 'damning' – although this is not accepted by the College or the School. He has gone on to state that this inspection came about as a result of the behaviour of a teacher, and concerns raised about that behaviour. As well as being critical of the way in which the College and the School handled the results of the inspection (in particular, how it informed the parents of pupils), he also has subsequent concerns over the management and governance of the College/School. Given this, he is seeking to obtain answers to pertinent issues, and in particular "*get to the bottom of the failed inspection and the breakdown in governance of the school...*" He has also criticised the behaviour of the College in dealing with his earlier requests, alleging that it has been evasive.
52. The Commissioner recognises that there is an assumption built into the FOIA that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to their activities. He notes that the context of these requests is an inspection by the ISI, which did make some findings against the School. Taking these factors into account, the Commissioner considers that this request can be seen to objectively have a serious purpose or value in providing transparency into the events surrounding the inspection by the ISI and the subsequent actions of the College/School.

Conclusion

53. The Commissioner recognises that there is a fine balancing act between protecting a public authority from vexatious requests and the promotion of transparency in the workings of an authority. The Commissioner has considered the arguments put forward by the complainant for his actions in submitting these requests and has balanced these with the arguments made by the College. He has also taken into account the wider context in which this complaint was made. In particular, the Commissioner has noted his conclusions regarding the pattern of requests being repeatedly made, and the obsessive quality (and quantity) of these requests. Having weighed all of the factors considered above the Commissioner has found that the arguments in favour of the application of this exemption by the College are of sufficient weight to support the engagement of section 14(1). As such, the Commissioner upholds the College's use of section 14(1).

Section 40(5)(a)

54. Section 40(5)(a) states that a public authority is not required to confirm or deny whether it holds requested information in relation to information which is (or if it were held by the public authority would be) the personal data of the applicant.
55. Personal data is defined in the Data Protection Act 1998 (the "DPA") as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller.
56. In this instance, the Commissioner considers that due to the wording of some of the requests that are the focus of this case, if information were held by the College (for the purposes of the FOIA) some of this information may be the personal data of the applicant. In particular, the Commissioner considers that any information that falls under the scope of the following requests might contain the personal data of the complainant:
- 7 September requests - requests (a), (b) and (c).
 - 5 November requests - requests (3), (10), (11), (12) and (17).
 - 29 November requests - requests (22), (23), (24) and (25)
57. As noted at paragraph 20 above, to the extent that if any information was held that would fall under the scope of any of the requests that form the scope of this case, and was the personal data of the complainant, the College would not be able to rely upon section 14(1) to

refuse to deal with these requests (insofar as they related to the personal data of the complainant). Instead the Commissioner considers that the College is able to rely upon section 40(5) in order to refuse to confirm or deny whether any information that is the personal data of the complainant, that would fall under the scope of the requests, is held.

58. Therefore, in relation to any information held that would fall under the scope of the requests, and (if it were held) would be the personal data of the complainant, the College can rely upon section 40(5)(a) in order to refuse to confirm or deny whether this information is held.
59. Although this exemption was not cited by the College, given his dual role as regulator of both the FOIA and the DPA the Commissioner considers that it is appropriate to consider the application of this exemption in relation to information of this kind.

Other matters

60. Section 7 of the Data Protection Act gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access.
61. There are unusual circumstances in this case. Although for the purposes of the FOIA the School is part of the College, for the purposes of the DPA the School and the College are separate data controllers. Therefore, although information held by the School is held by the College for the purposes of the FOIA, for the purposes of the DPA the two bodies are separate, and the information is only held by the School. Consequently, any subject access request for information held by the School would have to be made directly to the School, rather than the College.
62. The Commissioner has provided further advice regarding this in his letter to the complainant.

Right of appeal

63. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

64. 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.
65. 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, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF