

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2013

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
LN1 1YL

Decision (including any steps ordered)

1. The complainant requested information from Lincolnshire County Council ("the council") about classes for gifted and talented primary school pupils in Stamford. The council refused to respond to the requests citing section 14(1) of the Freedom of Information Act 2000 ("the FOIA"). This exclusion relates to vexatious requests.
2. The Commissioner's decision is that the council correctly relied on the exclusion under section 14(1) of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 7 November 2012, the complainant requested information from the council in the following terms:

"There's not been any comment in the Mercury since this article on 12 Oct [attached to request].

I'd be grateful for your comments on these classes which, I've been told, are funded by LCC, not QE.

- a) *Parents are invited to register their children, so when, how and by whom will G and T children be identified?*
- b) *What is the purpose of a "headstart" and "jumpstart" for those already ahead of others and especially via subjects such as theatre studies, textiles and Italian for Years 5 and 6?"*

5. On 22 November 2012, the council replied and said that it had decided that the requests were vexatious and should be refused using section 14(1) of the FOIA.
6. The complainant requested an internal review on 12 December 2012.
7. The council completed an internal review on 2 January 2013. It stated that it wished to maintain its position.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She asked the Commissioner to consider whether the council had correctly refused to respond to the requests.

Reasons for decision

Section 14(1) – vexatious requests

9. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here:

http://www.ico.org.uk/news/blog/2013/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

10. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious rather than the individual submitting it. Sometimes, it will be patently obvious when requests are vexatious. In cases where it is not so clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
11. On the face of it, the request itself is a relatively straight-forward one. However, as with many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous FOIA requests and various other encounters between the parties. The council relies on this history when characterising this request as vexatious.

12. The Commissioner is already familiar with some of the relevant background details because he has previously issued a formal decision notice under section 50 connected to the complainant's request to access some legal advice about the Stamford Scholarship Scheme. For ease of reference, a copy of that decision, which formed the subject of an unsuccessful appeal to the First-Tier Tribunal (Information Rights) ("the tribunal"), may be accessed here:

http://www.ico.org.uk/~//media/documents/decisionnotices/2011/fs_50348631.pdf

13. In brief, by way of background to this matter, the Stamford Scholarship Scheme was established by a formal agreement in 1987. Its purpose was to allow the council to pay for local children who were eligible for a grammar school education to attend Stamford Endowed Schools (SES). As explained by the complainant, elsewhere in Lincolnshire, there are maintained grammar and 11-18 comprehensive schools. The Stamford area has however never had either of these types of schools and the scholarship scheme partially addressed this problem. In 2006, the council considered whether to end the scheme in the light of the potential for the local comprehensive school, Queen Eleanor, to improve. The council resolved to terminate the existing contract and phase out the scheme, with future reviews.
14. The Commissioner understands that under section 14 of the 1996 Education Act, a local authority has a general duty to ensure that there is sufficient suitable school provision available in the area. The complainant has concerns about the decision taken by the council and has previously expressed her view to the Commissioner that the decision was a bad one and that the council should not have taken the steps that it did without ensuring that adequate alternative provision was in fact available. She has specifically alleged that the council has failed in its statutory duty under the Education Act.
15. In the present complaint, the complainant told the Commissioner that in 2010, she asked the Schools Improvement Service to review the secondary provision in the Stamford area and she met with a particular member of staff twice in connection with this. It appears that the complainant found the engagement helpful and she subsequently wrote to the same staff member in 2012 following a newspaper report about some new out-of-school classes for gifted and talented pupils in primary years 5 and 6. The classes were for pupils from several primary schools but to be held at Queen Eleanor. The requests made are those forming the subject of this complaint.
16. The complainant says that it was unfair for the council to treat her requests as vexatious because the requests made are not on the same

subject as previous communications, that is to say they do not concern the subject of whether there is appropriate provision for gifted and talented pupils at secondary school level in the Stamford area. She alleges that the council failed to give adequate consideration to the differences between these requests and her previous correspondence when it took the decision to refuse the requests as vexatious.

17. The complainant also expressed surprise about the council's decision to consider her requests as freedom of information requests because they were not intended to be treated as formal requests. The complainant explained that her intention at the time had only been to seek the opinions of the member of staff concerned and she takes the view that the council has intervened unnecessarily to prevent the individual from engaging with her.
18. In its initial response to the complainant on 22 November 2012, the council referred to previous correspondence sent to the complainant dated 9 August 2012 in which it had informed her that the council is no longer prepared to enter into correspondence concerning "Stamford Schools and related matters". The letter said that consideration would be given to whether any future requests should be refused using section 14(1) of the FOIA.
19. The council said that it had decided to treat the requests it had received as vexatious in view of the context and history of this matter. It said that the complainant had been in dispute with the council for over two years, and this dispute had generated on-going freedom of information requests and correspondence. The council said that this had continued despite disclosures and explanations being provided. The council said that it considered that the present requests were part of the same campaign to challenge the council's educational provision, particularly with respect to gifted and talented pupils, which would only lead to further on-going correspondence. It said that it considered that the requests were harassing and likely to impose a significant burden when seen in context.
20. In subsequent correspondence to the Commissioner, the council elaborated on its position as outlined above. It said that it had enclosed a copy of a schedule of key correspondence that it had with the complainant on the subject of the educational provision in the Stamford area dating back to 2003. The council said that the correspondence was predominantly concerned with the council's decision to end the SES scholarship scheme. The council said that this had included correspondence on a number of related issues such as the provision of secondary education in Stamford, the provision of support for more able pupils in the Stamford area, both at primary and secondary level, and the provision of 6th form facilities in the Stamford area.

21. The council stressed that one of its main concerns was that the provision of information and explanations to the complainant never seemed to lead to a resolution of the concerns. On the contrary, responding only seemed to generate further engagement. The council said that this was despite its efforts to be helpful over the years. It expressed its view that some officers had "gone out of their way" to provide explanations and comments to the complainant involving emails, letters, telephone calls as well as face to face meetings but matters never seemed to draw to a conclusion. The council referred the Commissioner to the schedule of correspondence it had provided as evidence of the attempts it had made to assist the complainant over a long period of time.
22. The council said that it had observed that any officer who enters into correspondence with the complainant can expect to receive numerous follow up enquiries over the course of a number of weeks, often involving several communications in a single day. The council described the complainant's approach as "scattergun". It said she often communicates with a number of different officers or councillors on the same issue at the same time and then invites them to comment on correspondence she has received from others. The council also highlighted that despite its letter to the complainant of 9 August 2012 informing her of its concerns about the on-going correspondence, there was no discernible change in the complainant's behaviour or genuine acknowledgement of the problem. The council said that the complainant's approach had caused, in its view, an unjustified level of disruption and irritation.
23. The council added that at no time had the complainant attempted any formal legal challenge to the council's decision-making. It said that she merely continues to challenge the council for alleged wrong-doing without providing any tangible evidence for the council to consider. The council referred to appeals made to the Local Government Ombudsman (who refused to investigate as there was no personal injustice suffered), the Commissioner and the tribunal which had not resulted in any adverse outcomes for the council, although the latter investigations had been time-consuming and expensive for the council to deal with.
24. The council said that it could not see any serious purpose or value in the complainant continuing to seek the views or opinions of a single officer or elected member, which she frequently does, when those views do not represent the position of the council as a whole. The council said that when the complainant seeks individual opinions or comments, even if some recorded information was held, it would be of little wider public benefit since it would only represent the opinion of the individual concerned. It said the complainant had only requested information that is clearly held by the council on a few occasions. It is more common for the complainant to choose to engage with a line of constant questioning

which the council perceives as an attempt to pressure the council to review decisions that have been made legitimately through the proper channels.

25. It is important to deal first with what appears to be the complainant's main argument as to why her requests in this case were not vexatious. Her contention is that none of the correspondence in the council's schedule of previous contact is relevant since the present request is not a continuation of the same issue. She argues that it is a key point that the present request is about classes for talented and gifted pupils at Queen Eleanor for primary school pupils rather than whether there is adequate educational provision at secondary school level in the Stamford area.
26. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious as reflected in the Commissioner's guidance. There are no prescriptive "rules" although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be vexatious as suggested by the complainant's argument. It is a common feature of vexatious requests however for there to be some kind of pattern of behaviour, usually emanating from some sense of grievance or alleged wrong-doing on the part of the authority. There may also be a theme, which may be broad or narrow, connecting requests and correspondence from the same individual.
27. In this particular case, the Commissioner considered that there was an overall theme to the correspondence that was linked quite clearly to the present request. The request is on the subject of the educational provision made for gifted and talented pupils, as is much of the complainant's previous correspondence. There is implicit criticism of the provision within the second request, which is a continuation of the complainant's viewpoint that the council is not providing adequate education for gifted and talented pupils. There is also a focus on the same school, Queen Eleanor. The complainant has made it clear that she believes that the council has not acted correctly with respect to the decisions it has made and has not, as a result, made appropriate provision for pupils, particularly gifted and talented pupils. In the Commissioner's view, the complainant's attempt to distinguish her request from her previous communications on the basis that she is not asking about secondary school provision in the Stamford area seems too artificial. She is obviously pursuing the same or very similar area of interest that has formed the main subject of much of her previous engagement.

28. Secondly, the complainant has said that she did not intend her email to be a freedom of information request. Regardless of that, any written request for information is a freedom of information request according to the legislation. The council explained that given the history of the matter and the likelihood of a dispute arising, it considered that it was appropriate to deal with the request on a formal footing. The Commissioner considers that this was reasonable. The alternative would simply have been for the council to reiterate its previous position that it was not going to engage any further and this would not have put the complainant in a better position. Furthermore, it is likely to have resulted in a complaint.
29. Turning now to the council's justification for treating the requests as vexatious, the Commissioner began by considering the schedule of correspondence provided by the council. The council said that these represented the key items of correspondence relevant to the subject matter, although it does not include the various items of additional correspondence generated as a result of the separate investigation by the Commissioner and tribunal (see paragraph 12) regarding the council's decision to withhold some legal advice. The council also presented a separate bundle comprising of copies of some of this correspondence to support its arguments.
30. The correspondence described in the schedule spans a time period from November 2003 up until the requests that form the subject of this complaint. Correspondence before 2009 appears to have been of a minimal nature, becoming much more frequent and consistent from September 2009 onwards after the council's decision to end the SES scholarship scheme. From the schedule of key documents provided, the Commissioner notes that the complainant corresponded with the council nearly every month from 2009 onwards on the same or similar theme, with often more than one item of correspondence or contact per month. As the council has identified, a good deal of the correspondence appears to consist of "follow up" enquiries from the complainant, further to the responses provided by the council, as well as a constant line of questioning directed to various officers and councillors.
31. Of course, it is not unusual for further queries to arise following the disclosure of information or the provision of an explanation and public authorities should be prepared to accept this to some extent as part of their regular duties, despite the level of tedium that may result after a certain time. Furthermore, as with any on-going correspondence, some of it will have been entirely legitimate and reasonable. The Commissioner is also mindful of the fact that the issues involved have in part naturally extended over a longer period of time because of the council's decision to undertake four-yearly reviews of the educational provision and the changing circumstances involved. The Commissioner

would also observe that no evidence was highlighted to demonstrate that the council tried to manage in a direct way what it has described as the complainant's "scattergun" approach to questioning different individuals about their opinions by providing her with a single point of contact, for example, or perhaps outlining the types of recorded information that could be provided.

32. However, the Commissioner has taken into account the wider context in this case and the extent to which this manner of engagement has formed a pattern of behaviour over a long period of time that the council has found to be harassing. While the Commissioner would note that there is no evidence of the complainant being abusive or aggressive in what she has said to the council, the Commissioner does accept that the on-going correspondence may well have had the effect of harassing the council because of the likelihood that responding would only generate further contact without satisfying the complainant. In other words, the vexatious quality of these requests arises more from the manner of the engagement with the council over a long period of time than from the tone.
33. In considering whether a request is vexatious, the relevant consideration is about the effect it has had and would have had on any reasonable public authority, regardless of what the complainant's intention may have been. Indeed, it is not uncommon with respect to vexatious request for a requester to have a genuine conviction that their request was a reasonable one to make in the circumstances. As stressed in the Commissioner's guidance on vexatious requests, the Commissioner will consider whether there was an appropriate sense of proportionate in the circumstances.
34. There is no doubt that the issue of suitable educational provision, particularly for the most able pupils, is a subject that the complainant is passionate about. Her concerns about the change in approach to this issue following the decision to phase out the scholarship scheme in Stamford were entirely understandable. There was clearly a good deal of public interest in understanding that decision and enabling the public to challenge it as appropriate. The Commissioner does however ultimately agree with the council that the complainant's approach has been disproportionate and is causing a drain on public resources because of the constant questioning on the same or similar themes. As acknowledged, members of the public are entitled to question public authorities, however, there must be a limit to the amount of resources that a public authority can be expected to spend on dealing with thematic questions from one individual, particularly in the absence of any formal legal challenge to the main decisions taken.

35. In this case, the council has been able to demonstrate that it has engaged to a significant extent with the complainant, despite the difficulties caused by the manner of her engagement. However, that has only served to generate a seemingly endless round of further correspondence. Furthermore, the Commissioner accepts that it is fair for the council to characterise the latest requests as a continuation of the complainant's challenge to whether the council is providing suitable provision for pupils, particularly the most able. Some evidence of that is clear from the critical way in which one of the requests is framed as follows:

"What is the purpose of a 'headstart' or 'jumpstart' for those already ahead of others and especially via subjects such as theatre studies, textiles and Italian for Years 5 and 6?"

36. Clearly, the complainant's chain of correspondence as a whole has not been without a serious purpose or value. As acknowledged, there was considerable public interest in some of the issues being raised and the Commissioner can appreciate the complainant's concerns. However, these facts are not in dispute. The heart of the issue is whether the latest requests had such a serious purpose or value that it would outweigh the burden imposed upon the council over a period of time in responding to the chain of questioning as described above.

37. While there is a public interest in understanding more about the classes that form the subject of the latest requests, there is nothing to suggest that there was any pressing serious purpose or value that would warrant the Commissioner over-turning the council's decision to rely on section 14(1) in the circumstances of this case. Moreover, the complainant has provided a very limited challenge to the council's application of the exclusion which rests mainly on the argument that the change in focus to provision for primary school pupils means that her requests cannot be a continuation of the previous correspondence, and the fact that she did not intend to make a freedom of information request. For the reasons already set out, the Commissioner finds these arguments unpersuasive. Taking everything into account, the Commissioner considers that it is more probable than not the council's refusal was correct.

Right of appeal

38. 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

39. 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.
40. 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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