

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2023

Public Authority: The Governing Body of Endeavour Learning Trust

Address: Hesketh Lane
Tarleton
Preston PR4 6AQ

Decision (including any steps ordered)

1. The Commissioner's decision is that the Endeavour Learning Trust correctly categorised the applicant's information request about staff appointments as a vexatious request under section 14(1) of FOIA. It is not necessary for Endeavour Learning Trust to take any corrective steps.

Request and response

2. The applicant made the following information request to Endeavour Learning Trust ('the Trust') on 12 November 2022:

"Please list all appointments made to permanent and fixed term roles within the Trust's central administrative and executive functions, including those in related organisations such as the Trust's Initial Teacher Training Programme and Schools Alliance.

Please list all appointments made; from the inception of the Trust up until the current date, including roles which were newly created, those in which an incumbent's job title was changed, as well as those roles which have since ceased to exist.

In addition to this, please list appointments to the Senior Leadership Teams at schools and academies managed by the Trust. This should

include appointments made from the onset of the Trust's managerial oversight, regardless of the state of academisation.

For each appointment, please detail:

- The date of the appointment,
- The job title,
- Whether or not the job was advertised widely (meaning somewhere beyond the Trust's own website(s)),
- How many candidates were interviewed for the role at the time of appointment,
- The exit date for the appointed person, including to another internal role.

The information can be provided in one document. I suggest the following structure:

Date of Appointment | Organisation | Job Title | Advertised Widely? |
No. Candidates Interviewed | Exit Date

01/01/20XX | Trust | CEO | NO | 0 | Still in post
01/01/20XX | School A | Head | YES | 3 | 02/02/20XX
01/01/20XX | SCITT | Adminis. | NO | 2 | Still in post
01/01/20XX | School B | Asst.Head | YES | 0 | 02/02/20XX”

3. The Trust responded to advise that it would cost too much or take up too much staff time to comply with the request.
4. The applicant then refined their request as follows:

“In this instance, I am prepared to limit the scope of the request to the Trust's central services/related organisations, and to its two longest standing Academies.”
5. The Trust provided some relevant information and advised that it deletes unsuccessful job applicants’ data after six months and so it does not hold all the information requested.
6. Further correspondence followed with the applicant querying and disputing the accuracy of aspects of the Trust’s response(s) and the Trust addressing these concerns and providing relevant information as necessary.
7. On 29 November 2022, the Trust sent the applicant a copy of its Records Management Policy and a spreadsheet containing information about certain appointments to the Trust.

8. Following the Christmas break, the correspondence continued. Having sought legal advice, on 23 January 2023 the Trust advised the applicant that it considered their request to be vexatious under section 14(1) of FOIA.
9. The Trust explained to the applicant that it had become concerned when the applicant returned to it a copy of the information it had provided to them on 29 November 2022 with initials next to the roles it had kept anonymous so as not to reveal the identity of the individuals holding those roles, which would contravene the UK GDPR and Data Protection Act 2018. The Trust said it was further concerned that those individuals and their roles are not published in an organisational chart "so as to make such steps a simple exercise" for the applicant to carry out. This added to the gravity of the Trust's concerns about the applicant's motives and their intention towards its staff. The Trust considered that the actions the applicant had taken were of concern and that it believed that their request created a serious risk to its employees' privacy and data rights. The Trust advised that as FOIA is forged on the basis that the information disclosed is to the world at large, it could not disclose any further information to the applicant or engage further with their request. The Trust took the view that the request is vexatious and that the applicant intended to cause distress to those involved in the request.
10. The Trust continued that, having considered their correspondence in the round, it was also concerned with the tone and threatening nature the applicant had adopted when engaging with it. It said that there was a level of contempt which added to the Trust's concern that the applicant was seeking the requested information to cause an unjustifiable level of disruption, irritation, and distress to those involved.
11. The Trust also said that, notwithstanding the above, the level of time the applicant had drawn down on its resource has exceeded FOIA's £450 cost limit – amounting to 18 hours work. It said that even if the Trust had not reached the conclusion that the requests are vexatious, it would have reached the point where it would have declined to proceed any further under the cost limit under section 12 of FOIA. The Trust advised the applicant to contact the Commissioner if they were dissatisfied. It repeated this advice on receipt of further correspondence from the applicant.

Reasons for decision

12. The complainant told the Commissioner that they were submitting the complaint to him on behalf of the applicant. The complainant provided the Commissioner with a document that they said showed that the

applicant had authorised the complainant to submit the complaint on their behalf.

13. This reasoning covers the Trust's reliance on section 14(1) of FOIA to refuse the applicant's request.
14. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
15. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
16. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC):
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
17. The Commissioner will first look at the value of the request as this is the main point in favour of the request not being vexatious. He will then look at the negative impacts of the request ie the three remaining themes of burden, motive, and harassment, before balancing the value of the requests against those negative impacts.
18. In its submission to the Commissioner, the Trust said that with regard to applying section 14(1) to the request, the applicant was "now known to be [the complainant]". The Trust notes that the FOIA complaint was submitted to the Commissioner by the complainant and that the complainant has an association with the Trust – the nature of which it has provided a little detail about without breaching confidentiality.
19. From its submission the Trust appears to consider that the applicant and the complainant are the same person. He further understands from this that the Trust may consider that the applicant submitted their request using a pseudonym, which would make the request invalid under FOIA. The Commissioner is not wholly convinced himself by the authorisation document the complainant provided to him. However, in the absence of compelling evidence to the contrary he will accept on this occasion that the applicant and complainant are different people.
20. In its submission, the Trust has confirmed that in the course of the request the applicant (although the Trust uses the name of the complainant in that instance) added initials to the previously

anonymised data. At this point, it says, it had already put a significant amount of resource into the request, but this act confirmed that the applicant was not content to know information generally. They had taken steps to animate the anonymised data and make it personal data. The Trust said it determined that any further steps it took to provide information posed a serious risk under the principles under Article 5 UK GDPR .

21. In addition, the Trust says it had taken account of the threatening tone and nature of the interaction with the applicant (again, the Trust names the complainant here) which cemented its view that the request was made to cause unjustifiable disruption, irritation, and distress to those involved.
22. The Trust says it is now aware of a second request submitted under a different name for information on the same subject matter. That request seeks to reduce the scope in an apparent attempt to avoid the determination that the original request is vexatious and/or it had exceeded the costs limit in any event. The Trust considers that there appears to be a targeted effort to obtain the personal data of employees at the Trust who are not at a senior level and which it would not be in the public interest to disclose.
23. The Trust concludes its submission by noting that the requests and all associated correspondence is being published on the website 'WhatDoTheyKnow'. It considers this adds to the gravity of the matter and the concern the Trust has that the information being obtained [and which the applicant has turned into personal data] is going to be made available to the public. Having become aware that that the applicant is trying to take steps to turn anonymised data into personal data, and that this is being used in a way which is highly likely to cause distress, has caused the Trust to conclude that the request is vexatious.

The Commissioner's conclusion

24. The Commissioner will accept that, when it was originally submitted and after it was refined, the request could be said to have some value, to the applicant if minimal wider value.
25. However, the Commissioner had himself noted the tone of the applicant's communications when he was reviewing their correspondence with the Trust. He agrees with the Trust that in the course of the correspondence, the applicant's tone became somewhat threatening and hostile, with no obvious reason.
26. In addition, the Commissioner has taken account of the applicant's handling of the information disclosed to them. They turned anonymised

data the Trust provided in a spreadsheet into personal data by adding initials to the information and, according to the Trust, this would not have been easy for them to do as the roles in question are not published in any organisational chart.

27. The Commissioner is persuaded that the applicant's motive does not appear simply to access the information they have requested. The request does not include a request for names, but the applicant has nonetheless added individuals' initials to information they received. The Commissioner has also taken account of the background and context of the request which the Trust has indicated, the ambiguous nature of the relationship between the applicant and the complainant, the tone of some of the applicant's correspondence to the Trust and the persistence of their correspondence. In the Commissioner's view the evidence suggests that the applicant was motivated to harass the Trust and its employees. Any value the request may have had does not outweigh the negative impacts of complying with the request; that is, what appears to be the applicant's dubious motive and the resulting harassment to the Trust and its employees.
28. The Commissioner is therefore satisfied that the Trust was entitled to refuse the request under section 14(1) of FOIA as the request is vexatious.

Other matters

29. As noted, a request submitted under a pseudonym is an invalid request under FOIA and a public authority is not obliged to comply with such a request. In his related published guidance 'Recognising a Request made under the FOIA¹', the Commissioner advises that if the name provided is not an obvious pseudonym and the public authority has no reason to believe that a pseudonym is being used, the authority should just accept the name provided at face value. However, by the same token, if the authority has reason to believe a pseudonym **is** being used, it is entitled to ask the applicant for proof of their identity before complying with the request – such as a copy of a utility bill.

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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

Cressida Woodall
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Wycliffe House
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