

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2023

Public Authority: Mere Valley Federation
Address: Emerson Valley School
Hodder Lane
Emerson Valley
Milton Keynes
MK4 2JR

Decision (including any steps ordered)

1. The complainant has requested information about governing board meetings from Emerson Valley School (EVS). EVS is part of the Mere Valley Federation. Under FOIA, Mere Valley Federation is the public authority, however, for the purposes of this decision notice EVS will be referenced throughout.
2. The Commissioner's decision is that the request was vexatious and therefore EVS was entitled to rely on section 14(1) of FOIA to refuse it.
3. The Commissioner does not require EVS to take any further steps.

Request and response

4. On 21 April 2023, the complainant wrote to EVS and requested information in the following terms:

"Please can you provide the following in relation to Governing Board Meetings from 01/01/2020 to 21/04/2023. Including:

- (a) the agenda for every meeting;
 - (b) the attendees;
 - (c) the signed minutes of every such meeting; and
 - (d) any report or other paper considered at any such meeting.”
5. EVS responded on 19 May 2023. It refused to comply with the request on the grounds that it was vexatious, citing section 14(1) of FOIA.
 6. Following an internal review EVS wrote to the complainant on 5 June 2023. It maintained its reliance on section 14(1) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 9 June 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine if EVS was correct to conclude that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

9. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The term “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

12. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case of section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("*Dransfield*")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
14. *Dransfield* established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The four broad themes considered by the Upper Tribunal in *Dransfield* were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of or to staff).
16. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).
17. When determining if a request is vexatious, a public authority can consider the context of the request and the history of its relationship with the requester, as the Commissioner's guidance explains: "The context and history is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies".

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

The School's position

18. EVS explained the background behind this particular request for information, using a complaint submitted to EVS by the complainant in April 2022 as a point of reference to start from. It is not necessary or appropriate for the Commissioner to repeat the details of that complaint in this decision notice. However, since that initial complaint was submitted a frequent and voluminous sequence of actions and correspondence from the complainant has ensued. EVS provided the Commissioner with a chronology and outline of the contacts from the complainant relating to this matter, demonstrating the burden which has already been imposed on it, as well as highlighting examples of communications which it believes were carried out with the sole intention of causing harm and distress to EVS and members of its staff. EVS was keen to highlight that it does not believe that the chronology it has provided is exhaustive, such is the extent of the complainant's activities relating to this matter.
19. EVS considers that this request would impose further burden upon it due to its broad nature, particularly with reference to "any report or other paper considered at any such meeting". EVS explained that for the dates indicated in the request there would be in the region of 200 documents to consider. As a disclosure of information in response to a FOIA request is essentially a disclosure to the world at large, rather than just to the requester, all of those documents would need to be carefully reviewed by staff to ensure that any personal or confidential information relating to staff or students was redacted and the documents were suitable to be made available to the general public. EVS detailed that preparing the documents for disclosure to the world at large would require many hours of staff work, and as such would be a further burden upon already constrained staff time.
20. EVS also considered the value and purpose of the information, to both the complainant and to the wider public. It stated that it is clear that a significant volume of the requested information would be of no value to them due to it being irrelevant to their concerns or due to it already being a matter of public record, giving an example of papers pertaining to planning and procurement of works, etc. EVS argued that the substantive matters of concern to the complainant have been independently investigated and the results put into the public domain. Given that the relevant authorities have already investigated the complainant's concerns, it is unclear what purpose is served by the complainant's continuing unabated activities and what possible interests are served by this FOIA request.
21. EVS firmly believes that the campaign which the complainant continues to pursue against it is a result of them not receiving the outcome they

were seeking from their original complaint against EVS in April 2022, and now amounts to malicious intent and harassment. It asserts that the complainant appears intent on causing as much damage and distress as possible for EVS and its management team.

22. EVS detailed that the complainant has involved multiple agencies such as the local Council, Ofsted and the Department for Education. In doing so they have sought to have particular members of staff struck off, and have triggered an audit by the local Council and an additional Ofsted inspection only 13 months after the most recent one was conducted.
23. EVS also provided evidence of the complainant using inappropriate channels of communication, such as directly contacting staff and governors, including messages to the private mobile number of one governor, as well as emails sent to all staff at EVS and all members of the parent-teacher association, some of which contained serious allegations against staff.
24. EVS summarised that it believes the request to be the complainant's attempt to seek redress of matters which have already been thoroughly investigated via the appropriate authorities. It considers that the burden on the School, the lack of serious value of the request, and evidence of both malicious intent and harassment of staff, governors and the wider community of parents to be clear evidence that the request is vexatious.

The complainant's position

25. The complainant argued that it has only submitted two previous requests for information to EVS prior to this one, and that this request does not place any additional burden on EVS resources. They further argued that Governing Board Minutes are public documents and that it is reasonable to expect that these are stored and easily retrievable within EVS's electronic filing system.
26. The complainant also provided a copy of an internal audit report which was conducted by the local Council as a result of their complaints about EVS, and stated that this evidences that the request was not vexatious.
27. The complainant further argued that FOIA requires an 'applicant blind' approach, and that EVS should provide a response which is not influenced by their knowledge or view of them as the requester and only considers the request in isolation.

The Commissioner's decision

28. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a

disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.

29. As detailed in the Commissioner's guidance, there are many reasons why a request for information can be considered to be vexatious. There are no prescriptive "rules", although there are generally typical characteristics and circumstances which assist in making a judgement about whether a request is vexatious.
30. The Commissioner's guidance emphasises that proportionality is a key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Ultimately, section 14 of FOIA is designed to protect public authorities from having to respond to requests which would cause a disproportionate burden or unjustified level of disruption or distress.
31. The Commissioner has considered the arguments put forward by both EVS and the complainant. Whilst he sympathises with the very sensitive personal concerns from which the complainant's continued contact with EVS stem, FOIA is not a means of recourse when the appropriate avenues for raising such concerns have failed to provide a complainant with the outcome they are seeking. The Commissioner considers it highly unlikely that compliance with the request will deliver any information that is likely to satisfy the intentions of the complainant in this case. Nor does he find that complying would satisfy any objective public interest.
32. It is clear to the Commissioner that the complainant's previous correspondence, complaints and requests have already placed a notable burden upon EVS's resources. Based on the evidence provided to him, which demonstrates the protracted and persistent nature of the complainant's campaign against EVS, the Commissioner finds that it is highly likely that responding to this request will generate further related actions or correspondence, thereby placing further burden upon the resources of EVS.
33. The Commissioner finds that in all circumstances of this case EVS has demonstrated that the request was vexatious and, therefore, it was entitled to rely on section 14(1) of FOIA to refuse to comply with the request.

Other matters

34. As an alternative to the burden of responding to the request under FOIA, EVS provided evidence of attempting to arrange to make the requested information available to the complainant for inspection in accordance with the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013, as guided by a communication it had received from the Department for Education. However, by the date of this notice, the complainant had so far chosen not to take up any of the opportunities presented to them. EVS asserted that this avenue remains an option and that it will continue to be open to arranging for the complainant to inspect the documents in accordance with the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.
35. The Commissioner does not have the authority to compel public authorities to make information available in accordance with any regulations other than those which fall under his remit, therefore it does not form part of this decision. However, he is of the view that EVS's offer of making the information available to the complainant for inspection in accordance with the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 is demonstrative of a reasonable approach and resolution to this matter.

Right of appeal

36. 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

37. 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.
38. 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

Amie Murray
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