First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS50883840

Appeal Reference: EA/2020/0127

Considered on the papers
On 2 March 2021 and subsequently

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

DAVID COOK & SUSAN WOLF

Between

JACQUELINE PRENTICE

Appellant

and

INFORMATION COMMISSIONER

First Respondent

Cases

Information Commissioner v Devon County Council and Dransfield [2012] UKUT 440
Havercroft v Information Commissioner EA/2011/0262

DECISION AND REASONS

1. Ms Prentice is the parent of children who attended The Hill Primary School. She was active in school affairs and corresponded extensively with the school on a range of issues. Difficulties arose with respect to the provision of education and she raised a number of issues with the school and pursued them in various fora.

2. On 8 September 2019 Ms Prentice contacted the school again and asked:-

   "[1] Please could I have a copy of the schools absence/sickness policy which I believe is different to the attendance policy.
   "[2] Can I also please get a list of all the school's policies and procedures so that I can check over if there are any others I may wish to have a copy of that aren't available

online."

3. The school responded the following day informing her that it did not have a separate policy in respect of request (1) but that its attendance policy covered it and sending a link to a list of policies on the Department for Education website. Ms Prentice responded on 20 September asking for four more policies having identified more information as a result of the sending of the link.

   "Thanks for the link, in here it states that there is statutory policy for '[Redacted]'
   [3] This is the policy that I am referring to. Please can I be sent this as a matter of urgency.
   "From the government list you shared there should also be:
   [4] Behaviour in Schools
   [5] Behaviour Principles Written statement
   [6] School exclusion

4. The school responded explaining that 3 and 6 were recent statutory requirements and it had not yet approved policies and it indicated that it would send links to 4 and 5. There was further correspondence with Ms Prentice arguing that it should hold material in relation to 3, despite the explanation which had already been given that the governors had not yet approved such a policy.

5. On 25 September 2019 the school wrote to Ms Prentice indicating a change of position with respect to various requests and wrote:-

   "….your repeated requests for data had now crossed the threshold and should be viewed as manifestly unfounded and excessive. We view your repeated requests and demands as being of malicious intent to the point of harassment as well as intending to be burdensome to the school. We have continually advised you in situations where we have been unable to provide you with information because it is personal and sensitive in nature, yet you have again requested that data through repeated freedom of information requests, knowing that we cannot provide to you.

   You are entitled to continue to make data requests to the school, be they freedom of information requests or Subject Access Requests, and we will continue to acknowledge them if you do make them. However, for the aforementioned reasons we are formally acknowledging your three freedom of information requests and are stating clearly that we will not be responding to them because you have already been provided with as much information in relation to these requests as we, the school, are able to give."

6. The school issued a further response to the request on 4 November 2019:-

   "we will no longer be replying to any further correspondence regarding our absence policy of 2018 having already replied on 19th and 24th September"

7. Ms Prentice was already in correspondence with the Information Commissioner (ICO). On 16 January 2020 the school issued a refusal notice informing Ms Prentice that it was refusing her request and relying on s14(1) FOIA.

8. The ICO investigated Ms Prentice's complaint and issued a decision notice. In this she set out her analysis of s14(1) in the light of the *Dransfield* decision and setting out how a public authority should approach the issue:-

27. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies"

9. She then considered the position of Ms Prentice and the school. The ICO noted the arguments advanced by Ms Prentice that the information should have been readily available with minimal effort for the school and that this request should have been considered separately from others; she explained she was:-

"not trying to re-open an issue, trying to gather information to determine if need to raise a new issue."

10. The ICO made a number of findings relating the amount and burden of correspondence:-

50…the Commissioner cannot consider that the sheer volume of correspondence that the School has received from the complainant is proportionate. The School provided the Commissioner with a report showing the volume of emails received by its server which indicates that, over a four-year period, the complainant has been sending, on average, an email every other day. During 2018, that figure exceeded an email per day. ….

52. The Commissioner therefore accepts that the School was required to deal with an excessive volume of correspondence, both in terms of the frequency with which it was received and the work required by each piece.

11. She considered that Ms Prentice was trying to re-litigate old disputes and that the motive in her correspondence did not now have the value it formally had and:-

60…Now the ongoing correspondence has the effect (even if not the intent) of causing a burden to the School which is now out of proportion to any intended benefit.

61. The complainant has made it clear in her correspondence that she does not intend to draw the matter to a close. The Commissioner accepts that, were the School required to answer this request, it would lead to further rounds of correspondence, requests and complaints.

12. The Commissioner concluded:-

66. In summary, whilst the complainant may, at least originally, have been acting with the best of intentions, the ongoing correspondence has drifted into vexatiousness. The burden on the School is considerable and is likely to distract from its core functions. The case for accepting such a burden (such as it was) has diminished considerably and is not justified.

67. The Commissioner therefore finds that the School was entitled to rely on section 14 of the FOIA to refuse the requests.

13. Ms Prentice's grounds of appeal were wide-ranging and extensive and she sought to respond to many parts of the decision notice. The key argument was that the purpose and value of her request should outweigh any burden on the school which had failed in the provision of education to the detriment of children and had not been transparent, had tried to cover up and obstruct her attempts to elicit information which meant that her requests and complaints were lengthy. She emphasised the number and significance of issues she had to deal with. She listed a number of issues she had raised and complaints that she had made about the school as well as criticising the ICO's failings:-

    - She complained that she had never had any update to any investigation
    - She had complained to OFSTED (the body responsible for inspecting schools) but it had informed her that it did not deal with individual complaints
    - She had an ongoing complaint with LGO (Local Government Ombudsman)
    - In one set of proceedings she had complained about the judge's conduct of the hearing
    - Her emails became increasingly long because it appeared that she felt that the school was blocking her requests and showing a blatant disregard for policies and the law
    - She rejected the ICO's argument that she re-fought disputes which had been resolved, as it appeared that she felt that her requests were to obtain evidence to assist with complaints, although one adverse decision had happened after she had made the requests
    - She had escalated her school complaint to the DfE (Department for Education) as it appeared that she felt that it had had not produced a satisfactory response and she had considered taking things further with DfE
    - She disapproved of the ICO's approach which she considered was based on simply accepting the word of the school

14. In resisting the appeal the ICO maintained her position. She noted the substantial issues which Ms Prentice had been working to deal with but reaffirmed her stance that the request was an attempt to revisit previous disputes and that the school would continue to experience a considerable burden from such requests if it had responded to this one. The ICO relied on a previous tribunal decision, *Havercroft* which set out the importance of s14(1) of FOIA in protecting the public interest

    "Public bodies are responsible for the delivery of vital services and the use of large sums of public money: they are under a duty to deliver those services effectively and use their resources economically and efficiently. In carrying out their roles they must be publicly accountable and the FOIA regime is intended to enhance that accountability. However there are many aspects to accountability, and FOIA is not the sole means, nor can it substitute for the others. The primary function of public bodies is the delivery of services and if management time and resources are disproportionately spent in dealing with FOIA requests then those services, and the decision-making around the delivery of services, may suffer to the detriment of the public."

Consideration

15. The starting point for consideration of whether a request for information is vexatious is to consider that request in its context. The request is on its surface simply for various policies which a school is supposed to have in place to help with its effective provision of education in a way which is transparent to parents and the local community. However, in order to understand whether s14(1) applies, it is necessary to go beyond the usual pieties of FOIA being applicant and motive blind and consider the context.

16. Four broad issues or themes were identified by Upper Tribunal Judge Wikeley in *Dransfield* as of relevance when deciding whether a request is vexatious. These were:

    (a) the burden (on the public authority and its staff);
    (b) the motive (of the requester);
    (c) the value or serious purpose (of the request); and
    (d) any harassment or distress (of and to staff).

17. In this appeal a consideration of the burden is particularly relevant. The context and history of the request is of extensive correspondence, multiple complaints and references to various outside agencies which have been extremely demanding for both sides and with little to show for it. The material before the tribunal amply justifies the findings of the ICO (DN paragraphs 50, 52) that the volume of correspondence, of increasing complexity and often seeking information or arguing about the information provided, demonstrates a substantial burden for a school. The burden has been increased by Mrs Prentice sending some e-mails to multiple recipients and also seeking to impose tight deadlines for response. Ms Prentice's concerns about education provision are entirely understandable, however she has pursued those through other routes and has not, from the material before the tribunal, demonstrated failings sufficient to result in findings adverse to the school. Her SARs have been a significant part of that burden but the ICO has not found issues to criticise beyond some delay.

18. The repetition of a request for information which the school has explained it cannot lawfully provide (paragraph 3 above) demonstrates the extent to which Ms Prentice's approach appears to have shifted from a pursuit of proper issues (as was acknowledged by the ICO DN paragraph 66) into a vexatious pursuit of the school whereby request builds on response with little regard to the objective public interest in the request.

19. This request had little intrinsic value. It is clear that Ms Prentice has increasingly sought to investigate many aspects of the school's functioning as she becomes aware of them. She is unprepared to accept that all the myriad individuals and bodies concerned with the school - the headteacher, the governing body, OFSTED, the local authority etc are between them ensuring its accountability and seeks to have the school, in all its functions, accountable to her. This is imposing a considerable burden on the school. Staff at the school, whatever the expressed intentions of Ms Prentice, feel harassed. The function of s14(1) is to protect resources and to ensure that they are not wasted. The request is the latest manifestation of a disproportionate claim on the school's administrative resources with no prospect of any public or private value coming from it. It is manifestly unreasonable.

20. The ICO in her decision notice has scrupulously weighed all the issues and has come to the correct decision.

21. The appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal
Date: 21 March 2021
Promulgated: 24 March 2021