

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 03 February 2014

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

### Decision (including any steps ordered)

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The complainant made a request for information relating to a survey of staff at the Independent Case Examiner (ICE) which is part of the Department for Work and Pensions (DWP). DWP refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the DWP has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

### Background

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1. The complainant is a former employee and has been in dispute with the ICE since the Spring of 2012. Since August 2012, the complainant has sent emails and letters of complaint to the ICE office, including references to management "bullying" and has made eight FOIA requests. Further details are included in the confidential annex.

### Request and response

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2. On 6 March 2013, the complainant wrote to the ICE and requested information in the following terms:

*"A survey was issued to all Independent Case Examiner's (ICE) staff either late last year, or earlier this year, which included a section on bullying, within the workplace."*

*I request, you provide a copy of the survey and details of all responses from ICE staff.*

*Please advise, how many staff currently work at the ICE office, how many staff responded to the survey & how many of the staff who responded, complained about bullying at ICE.*

*Will you please also advise me, as a result of a significant number of staff members admitting to having being bullied, or having experienced bullying, what action the DWP is taking to address this issue.*

*Will you please advise me, if this issue has been raised with Senior DWP Managers, ie Directors, Deputy Directors etc.'*

3. The ICE responded on 14 March 2013. It stated that it considered the request to be vexatious and therefore covered by section 14(1) of the FOIA.

4. The complainant requested a review on 18 March 2013 and added another request:

*'Will the ICE Office please supply me with the results of the TU survey, regarding bullying, including all responses and the percentage of officers who responded and admitted to being bullied.'*

5. The ICE provided an internal review on 8 April 2013 in which the original position was maintained. It was also stated that the additional request above should be directed to the Public and Commercial Services Union.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 14 October 2013 to complain about the way his request for information of 6 March 2013 had been handled. He disputed that his request was vexatious.

7. The Commissioner examined the request and related correspondence from the complainant. The Commissioner has considered whether the DWP is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

### **Reasons for decision**

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8. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

9. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
10. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the  
  
*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).
11. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be

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<sup>1</sup> GIA/3037/2011

<sup>2</sup>

[http://www.ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

considered in reaching a judgement as to whether a request is vexatious.

13. The DWP identified several indicators as being present within the request. It considered that the request was obsessive, was designed to cause disruption or annoyance and had the effect of harassing the public authority. It was therefore vexatious.
14. The Commissioner has considered each of the factors the DWP identified in reaching this position.

### **The request is obsessive**

15. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
16. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
17. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
18. In this case, the complainant has stated that his motive for needing the information is to compile evidence for a complaint of systematic bullying. The ICE have stated that the complainant is no longer an employee of ICE and if there are any employees that have been bullied there is no mention that the complainant has been asked to represent them: *'nor is it apparent why they would do so when there are others better placed and better qualified to represent them, such as trade union officials from the office or the branch.'*
19. The ICE contends that the request is obsessive as it is *'unlikely that (the complainant) has personally experienced such treatment'* and the ICE believe that to provide the information *'would provide further ammunition'* to the complainant for his *'unreasonable pursuit'* of a

(personal) *grievance which has already been found to have no merit.*  
(See confidential annex)

20. The Commissioner has taken into account the context and background to the request, in conjunction with the volume of emails and correspondence to the DWP and considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

**The request was designed to cause disruption or annoyance**

21. The ICE has stated that *'there is no reason why the complainant would need information about one small unit other than to further his aim of disrupting the unit and causing annoyance and distress to its managers. He has no ongoing appeal or tribunal action.'*
22. In his request for a review of the request for information on 18 March 2013, the complainant stated that in August 2012, he was *'fully aware that a number of officers at the ICE Office had experienced bullying, but were terrified to speak out, for fear of reprisals and at that point... I would be a lone voice complaining about bullying.'* However, the correspondence from August 2012 does not mention bullying.
23. The complainant made 5 FOIA requests (24 individual questions) to the ICE office between September and October 2012. This request is dated 6 March 2013 and the follow-up question was redirected to the union. The complainant made another FOIA request under what ICE believed to be an assumed name on 13 March 2013 (about away days) and this was refused by the ICE. He made a further request on 18 October 2013 (about FOI requests) which was answered on 14 November 2013.
24. The Commissioner has considered all the correspondence presented to him and found that there is sufficient evidence to suggest that the request was vexatious in that it was designed to cause disruption and annoyance to the staff at ICE.

**It has the effect of harassing the public authority.**

25. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.

26. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
27. In this case, the request is made against a backdrop of other correspondence and although the purpose of the request appears to be serious in its intent, the ICE has stated that there *'appears to be no purpose to the request other than to facilitate a personal campaign of harassment. The effect of providing it would in all probability be to cause further disruption, annoyance and distress to the targeted individuals and the ICE office generally.'*
28. The complainant has stated that he needs the information for a complaint about systemic bullying but has not stated who would benefit from the information.
29. The complainant has not used profane or threatening language in any correspondence, but the ICE state that he *'has named former colleagues and compared their performance unfavourably with his own'* in emails to the public in-box.
30. The Commissioner has considered the purpose of the request in the context of the other correspondence and finds that the effect is to harass and annoy the public authority.

### **The Commissioner's decision**

31. The public authority and the complainant have both provided the Commissioner with context and history of the correspondence and contact between the complainant and the ICE.
32. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the DWP was correct to find the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request is obsessive and had the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

## Right of appeal

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33. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

34. 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.
35. 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**  
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